F1
235
721
eserve
R

Illinois Institute of Technology
NOV 24 1998
Information Center



1998

Illinois Register

Rules of Governmental Agencies

Volume 22, Issue 47—November 20, 1998

Pages 19,966 – 20,430

Index Department
Administrative Code Div.
111 East Monroe Street
Springfield, IL 62756
(217) 782-7017
http://www.sos.state.il.us

published by
George H. Ryan
Secretary of State

Printed on recycled paper

TABLE OF CONTENTS

November 20, 1998 Volume 22, Issue 47

PROPOSED RULES

CHILDREN AND FAMILY SERVICES, DEPARTMENT OF
Day Care Information Line
89 Ill. Adm. Code 378 19966
Public Notice of Change of License
89 Ill. Adm. Code 376 19972

HOUSING DEVELOPMENT AUTHORITY, ILLINOIS
Affordable Housing Program
47 Ill. Adm. Code 360 19977

HUMAN SERVICES, DEPARTMENT OF
Food Stamps
89 Ill. Adm. Code 121 19984

REVENUE, DEPARTMENT OF
Internet Filing Of Illinois Income Tax Returns
86 Ill. Adm. Code 106 20001

ADOPTED RULES

CAPITAL DEVELOPMENT BOARD
Bidder Responsibility
44 Ill. Adm. Code 950 20007
Hearing Procedures
71 Ill. Adm. Code 100 20022
Prequalification Of Architects And Engineers
44 Ill. Adm. Code 980 20026

CENTRAL MANAGEMENT SERVICES, DEPARTMENT OF
Travel
80 Ill. Adm. Code 2800 20036

COMMERCE COMMISSION, ILLINOIS
Electric Reliability
83 Ill. Adm. Code 411 20042
Non-Discrimination In Affiliate Transaction For Electric Utilities
83 Ill. Adm. Code 450 20071
Reports Of Accidents Or Incidents By Persons Engaged In The Transportation Of Gas, Or Who Own Or Operate Gas Pipeline Facilities
83 Ill. Adm. Code 595 20083
Standards Of Service For Electric Utilities
83 Ill. Adm. Code 410 20087

HUMAN SERVICES, DEPARTMENT OF
Food Stamps
89 Ill. Adm. Code 121 20099

INSURANCE, DEPARTMENT OF
Individual And Group Life Insurance Policy Illustrations
50 Ill. Adm. Code 1406 20121

NATURAL RESOURCES, DEPARTMENT OF
Special Program Performance Standards-- Operations On Prime Farmland
62 Ill. Adm. Code 1823 20131
State Processes For Designating Areas Unsuitable For Surface Coal Mining Operations
62 Ill. Adm. Code 1764 20137
Administrative And Judicial Review
62 Ill. Adm. Code 1847 20144
Areas Designated By Act Of Congress
62 Ill. Adm. Code 1761 20152
Bonding And Insurance Requirements For Surface Coal Mining And Reclamation Operations
62 Ill. Adm. Code 1800 20157
Department Inspections
62 Ill. Adm. Code 1840 20163
General Definitions
62 Ill. Adm. Code 1701 20169
Permanent Program Performance Standards-- Underground Mining Operations
62 Ill. Adm. Code 1817 20197
Permanent Program Performance Standards-Surface Mining Activities
62 Ill. Adm. Code 1816 20228
Permit Applications--Minimum Requirements For Legal, Financial, Compliance, And Related Information
62 Ill. Adm. Code 1778 20260
Requirements For Permits And Permit Processing
62 Ill. Adm. Code 1773 20265
Requirements For Permits For Special Categories Of Mining
62 Ill. Adm. Code 1785 20273
Revision; Renewal; And Transfer, Assignment, Or Sale Of Permit Rights
62 Ill. Adm. Code 1774 20280
Special Permanent Program Performance Standards-- Operations On High Capability Lands
62 Ill. Adm. Code 1825 20286
Training, Examination And Certification Of Blasters
62 Ill. Adm. Code 1850 20290

REVENUE, DEPARTMENT OF
Motor Fuel Tax
86 Ill. Adm. Code 500 20299

SECRETARY OF STATE
Standard Procurement
44 Ill. Adm. Code 2000 20306

TRANSPORTATION, DEPARTMENT OF
Prequalification Of Contractors And Issuance Of Plans And Proposals
44 Ill. Adm. Code 650 20393

PEREMPTORY RULES

CENTRAL MANAGEMENT SERVICES, DEPARTMENT OF
Pay Plan
80 Ill. Adm. Code 310 20406

AGENCY NOTICES OF MODIFICATION, WITHDRAWAL OR REFUSAL TO PROPOSED RULES

COMMERCE COMMISSION, ILLINOIS
Electric Reliability
83 Ill. Adm. Code 411, Refusal 20424
Non-Discrimination In Affiliate Transaction For Electric Utilities
83 Ill. Adm. Code 450, Refusal 20425

TRANSPORTATION, DEPARTMENT OF
Contract Procurement
44 Ill. Adm. Code 660, Refusal 20426

JOINT COMMITTEE ON ADMINISTRATIVE RULES

Second Notices Received 20430

ISSUES INDEX I-1

Editor's Note: The Cumulative Index and Sections Affected Index will be printed on a quarterly basis. The printing schedule for the quarterly and annual indexes are as follows:

April 17, 1998	Issue 16: Through	March 31, 1998	
July 17, 1998	Issue 29: Through	June 30, 1998	
October 16, 1998	Issue 42: Through	September 30, 1998	
January 15, 1999	Issue 3: Through	December 31, 1998	(Annual)

Printed by authority of the State of Illinois
November 1998 – 700 – GA-346

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED RULES

1) Heading of the Part: Day Care Information Line

2) Code of Citation: 89 Ill. Adm. Code 378

3) Section Numbers: Proposed Action:
   378.10 New
   378.20 New
   378.30 New

4) Statutory Authority: The Child Care Act of 1969 [225 ILCS 10].

5) A Complete Description of the Subjects and Issues Involved: The purpose of this Part is to prescribe the standards for the statewide toll-free day care information line for licensed day care homes, group day care homes, day care centers and day care agencies.

6) Will these proposed rules replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed rules contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: These rules do not create or expand a State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

    Mr. Jerry B. Crabtree
    Office of Child and Family Policy
    Department of Children and Family Services
    406 E. Monroe, Station #65
    Springfield, Illinois 62703-1498
    (217) 524-1983
    TDD: (217) 524-3715
    E-Mail: ORPINFO@pop.state.il.us

    The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

12) Initial Regulatory Flexibility Analysis:

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED RULES

A) Types of small businesses, small municipalities and not for profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: July 1998

The full text of the Proposed Rule begins on the next page:

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED RULES

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER d: LICENSING ADMINISTRATION

PART 378
DAY CARE INFORMATION LINE

Section
378.10 Purpose
378.20 Definitions
378.30 General Requirements and Operation of Day Care Information Line

AUTHORITY: Implementing and authorized by the Child Care Act of 1969 [225 ILCS 10].

SOURCE: Adopted at 23 Ill. Reg._____, effective _____.

Section 378.10 Purpose

The purpose of this Part is to prescribe the standards for the Statewide toll-free day care information line for licensed day care homes, group day care homes, day care centers and day care agencies.

Section 378.20 Definitions

"Complaint" means any report to the Department alleging violation of the laws or rules related to the licensing of child care facilities.

"Day care agency" means any person, group of persons, public or private agency, association or organization which undertakes to provide one or more day care homes with administrative services including, but not limited to, consultation, technical assistance, training, supervision, evaluation and provision of or referral to health and social services under contractual arrangement. (Section 2.11 of the Child Care Act of 1969 [225 ILCS 10/2.11])

"Day care center" means any child care facility which regularly provides day care for less than 24 hours per day for more than 8 children in a family home or more than 3 children in a facility other than a family home, including senior citizen buildings. The term does not include:

- *programs operated by public or private elementary school systems or secondary level school units or institutions of higher learning which serve children who shall have attained the age of 3 years;*

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED RULES

- *programs or that portion of the program which serves children who shall have attained the age of 3 years and which are recognized by the State Board of Education;*

- *educational program or programs serving children who shall have attained the age of 3 years and which are operated by a school which is registered with the State Board of Education and which is recognized or accredited by a recognized national or multi-state educational organization or association which regularly recognizes or accredits schools;*

- *programs which exclusively serve or that portion of the program which serves handicapped children who shall have attained the age of 3 years but are less than 21 years of age and which are registered and approved as meeting standards of the State Board of Education and applicable fire marshal standards;*

- *facilities operated in connection with a shopping center or service, religious services or other similar facility where transient children are cared for temporarily while parents or custodians of the children are occupied on the premises and readily available;*

- *any type of day care center that is conducted on federal government premises;*

- *special activities programs, including athletics, crafts instruction and similar activities conducted on an organized and periodic basis by civic, charitable and governmental organizations;*

- *part day child care facilities, as defined in Section 2.10 of the Act; or*

- *programs or that portion of the program which:*

  - *serves children who shall have attained the age of 3 years,*
  - *is operated by churches or religious institutions as described in Section 501(c)(3) of the federal Internal Revenue Code,*
  - *receives no governmental aid,*
  - *is operated as a component of religious, nonprofit elementary school,*
  - *operates primarily to provide religious education, and*
  - *meets appropriate State or local health and fire safety standards.*

For purposes of this Part, "children who shall have attained the age

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED RULES

of 3 years" shall mean children who are 3 years of age, but less than 4 years of age, at the time of enrollment in the program. (Section 2.09 of the Child Care Act of 1969 [225 ILCS 10/2.09])

"Day care facility" means a day care home, group day care home, day care agency or day care center subject to licensing by the Department of Children and Family Services.

"Day care home" means family homes which receive more than 3 up to a maximum of 12 children including the family's natural, foster, or adopted children and all other persons under the age of 12. The term does not include facilities which receive only children from a single household. (Section 2.18 of the Child Care Act of 1969 [225 ILCS 10/2.18])

"Department" means the Illinois Department of Children and Family Services. (Section 2.18 of the Child Care Act of 1969 [225 ILCS 10/2.18])

"Group day care home" means a family home which receives more than 3 up to 16 children for less than 24 hours per day. The number counted includes the family's natural, foster, or adopted children and all other persons under the age of 12. (Section 2.20 of the Child Care Act of 1969 [225 ILCS 10/2.20])

"License" means a document issued by the Department of Children and Family Services that authorizes child care facilities to operate in accordance with applicable standards and the provisions of the Child Care Act of 1969.

"License capacity" means the maximum number of day care children under age 12 permitted in the facility at any one time.

"License violation" means a violation of the Department of Children and Family Services licensing standards that results in a corrective action plan or jeopardizes the health, safety and welfare of a child.

"Substantiated complaint" means a violation of Department of Children and Family Services licensing standards or the Child Care Act which has been substantiated through a licensing complaint investigation.

Section 378.30 General Requirements and Operation of Day Care Information Line

a) Hours of Operation
The Department of Children and Family Services shall establish and maintain a statewide toll-free number that will be staffed from 8:30 a.m. - 5:00 p.m., Monday through Friday, excluding holidays. The phone line shall be available to all individuals within the State of

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED RULES

Illinois to provide the history and record of licensed day care homes, group day care homes, day care agencies and day care centers.

b) Information to be Provided
1) Specific information provided by the day care information line on day care facilities closed prior to January 1, 1999 shall be:
A) date the facility was initially licensed,
B) expiration date of the current license,
C) revocations, and
D) surrenders.
2) Specific information provided by the day care information line on licensed day care facilities whose license is in effect on January 1, 1999 or which becomes licensed after January 1, 1999 shall be:
A) date the facility was initially licensed,
B) effective date of the current license,
C) expiration date of the current license,
D) license capacity,
E) age range served,
F) revocations,
G) surrenders,
H) licensing status (i.e., pending, conditional, etc.), and
I) a list of substantiated complaints and Department staff findings of licensing violations for the preceding 12 months prior to the date of inquiry. Information on substantiated complaints and licensing violations that occurred prior to January 1, 1999 shall not be released through the day care information line. Such information is available through a Freedom of Information Act request.

c) Confidential Information
The following information shall not be released by the day care information line:
1) specific details on the substantiated complaints, licensing violations, revocations, or surrenders,
2) child abuse and neglect reports,
3) children's names,
4) parents' names,
5) employees' names or position,
6) information on any complaint investigation that is currently pending or has not been substantiated by a Department licensing investigation,
7) enforcement actions currently waiting resolution through the appeal process,
8) financial information, and
9) identity of the reporter of the complaint.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED RULES

1) Heading of the Part: Public Notice of Change in License

2) Code Citation: 89 Ill. Adm. Code 376

3) Section Numbers: Proposed Action:
376.10 New
376.20 New
376.30 New

4) Statutory Authority: 225 ILCS 10/4(c)

5) A Complete Description of the Subjects and Issues Involved: The proposed rules prescribe the process to be used to notify the general community when a licensed child care institution, group home and/or maternity center proposes to change its program or services.

6) Will these proposed rules replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed rules contain incorporations by reference? No

9) Are there any proposed amendments to this Part pending? No

10) Statement of Statewide Policy Objectives: These rules do not create or expand a State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

Jerry B. Crabtree
Department of Children and Family Services
406 East Monroe, Station #65
Springfield, Illinois 62701-1498
(217) 524-1983
TTY: (217) 524-3715

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED RULES

corporations affected: Licensed group homes, licensed child care institutions and licensed maternity centers

B) Reporting, bookkeeping or other procedures required for compliance: Requires the group home, child care institution or maternity center to report to the Department of Children and Family Services when it proposes to change the range of care or services offered, the age or type of children served, or the area within the facility used by the children.

C) Types of professional skills necessary for compliance: No additional professional skills are necessary.

13) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the two most recent regulatory agendas because: The need for the rulemaking was not anticipated at the time of the last two regulatory agendas.

The full text of the Proposed Rules begins on the next page:

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED RULES

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER d: LICENSING ADMINISTRATION

PART 376
PUBLIC NOTICE OF CHANGE IN LICENSE

Section
376.10 Purpose
376.20 Definitions
376.30 Public Notice and Department Approval

AUTHORITY: Implementing and authorized by Section 4(c) of the Child Care Act of 1969 [225 ILCS 10/4(c)].

SOURCE: Adopted at 23 Ill. Reg. _____, effective _____.

Section 376.10 Purpose

a) The purpose of this Part is to prescribe the process to be used to notify the general community when a child care institution, maternity center, and/or group home proposes to change its program or services.
b) This Part applies to child care institutions, maternity centers, and group homes licensed by the Department as defined in the Child Care Act of 1969.

Section 376.20 Definitions

"Child" means any person under 18 years of age. For purposes of admission to and residence in child care and maternity centers, the term also means any person under 21 years of age who is referred by a parent or guardian, including an agency having legal responsibility for the person pursuant to the Juvenile Court Act or the Juvenile Court Act of 1987. (Section 2.01 of the Child Care Act of 1969 [225 ILCS 10/2.01])

"Child care institution" means a child care facility where more than 7 children are received and maintained for the purpose of providing them with care or training or both. The term "child care institution" includes residential schools, primarily serving ambulatory handicapped children, and those operating a full calendar year, but does not include:

- *any State-operated institution for child care established by legislative action;*

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED RULES

- *any juvenile detention or shelter care home established and operated by any county or child protection district established under the "Child Protection Act";*

- *any institution, home, place or facility operating under a license pursuant to the Nursing Home Care Act* [210 ILCS 45];

- *any bona fide boarding school in which children are primarily taught branches of education corresponding to those taught in public schools, grades one through 12, or taught in public elementary schools, high schools or both elementary and high schools, and which operates on a regular academic school year basis; or*

- *any facility licensed as a "group home" as defined in the Child Care Act of 1969.* (Section 2.06 of the Child Care Act of 1969 [225 ILCS 10/2.06])

"Department" means the Illinois Department of Children and Family Services. (Section 2.02 of the Child Care Act of 1969 [225 ILCS 10/2.02])

"Group home" means a child care facility which provides care for no more than 10 children placed by and under the supervision of a licensed child welfare agency with these homes being owned or rented, staffed, maintained and otherwise operated by the agency. (Section 2.16 of the Child Care Act of 1969 [225 ILCS 10/2.16])

"Maternity center" means a facility in which any person, agency or corporation, other than one licensed as a foster family home or group home under the Child Care Act of 1969, receives, treats or cares for one or more unwed pregnant girls under 18 years of age, except that the term does not include any facility licensed under the Hospital Licensing Act [210 ILCS 80]. (Section 2.07 of the Child Care Act of 1969 [225 ILCS 10/2.07]

"Public Notice"" means notification to the public in a newspaper of general publication in the county or municipality in which the applicant facility is located.

"Newspaper" means a newspaper as defined in the Notices by Publication Act [715 ILCS 5/5].

Section 376.30 Public Notice and Department Approval

a) A child care institution, maternity center or group home shall request in writing Department approval to change the following:
   1) *the range of care or services offered at the facility,*

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF PROPOSED RULES

2) *the age or type of children served, or*
3) *the area within the facility used by the children.* [225 ILCS 10/4]

b) Within ten days after receipt of the request to make any of the changes specified in subsection (a) above, the Department shall place a notice of the proposed changes in a newspaper of general circulation in the county or municipality in which the facility is located. The notice shall be published for three consecutive weeks and shall be printed *in the total circulation of each edition on the date of publication of the newspaper in which the notice is published* as required by the Notice by Publication Act [715 ILCS 5/3].

c) The Department will accept public comments up to five working days after the last publication date of the notice. Such comments shall be submitted to:

Deputy Director, Division of Operations and Community Services
Department of Children and Family Services
100 West Randolph, 6-200
Chicago, IL 60601

d) No changes in any of the conditions of the license shall be made prior to the public notification required by this Part and approval by the Department.

e) The Department will notify the licensee of approval or disapproval of the proposed changes no later than ten working days after the last publication date of the notice.

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF PROPOSED AMENDMENT

1) Heading of the Part: Affordable Housing Program

2) Code Citation: 47 Ill. Adm. Code 360

3)

Section Numbers:	Proposed Action:
360.203	Amendment
360.401	Amendment

4) Statutory Authority: Implemented and authorized by the Illinois Housing Development Act [20 ILCS 3805]

5) A Complete Description of the Subjects and Issues Involved: A change in the administrative expenses approved by the General Assembly and public notice given by other governmental entities.

6) Will this rulemaking replace any emergency rulemaking currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this rulemaking contain incorporations by reference? No

9) Are there any other proposed rulemakings pending on this Part? No

10) Statement of Statewide Policy Objectives: This proposed rulemaking does not create a State Mandate.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested parties may submit comments, data, views or arguements concerning this rulemaking in writing to:

Lori Silver, Esq.
401 N. Michigan Ave., Suite 900
Chicago, Illinois 60611
312/836-7341

The Authority will consider all written comments received at the above address within 45 days after the date of publication of this *Illinois Register*.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: It will have no impact on any small business

B) Reporting, bookkeeping or other procedures required for compliance: No new requirements

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF PROPOSED AMENDMENT

C) Types of professional skills necessary for compliance: No new professional skills needed

13) Regulatory Agenda on which this rulemaking was summarized: June 1998

The full text of the Proposed Amendment begins on the next page:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF PROPOSED AMENDMENT

TITLE 47: HOUSING AND COMMUNITY DEVELOPMENT
CHAPTER II: ILLINOIS HOUSING DEVELOPMENT AUTHORITY

PART 360
AFFORDABLE HOUSING PROGRAM

SUBPART A: GENERAL RULES

Section
360.101 Authority
360.102 Purpose and Objectives
360.103 Definitions
360.104 Borrowing by the Authority
360.105 Compliance with Federal Law
360.106 Standards - Criteria
360.107 Forms and Procedures for the Program
360.108 Fees and Charges of the Authority
360.109 Waiver (Repealed)
360.110 Amendment
360.111 Severability
360.112 Gender and Number
360.113 Titles and Captions
360.114 Calendar Days

SUBPART B: USES

Section
360.201 Recipients
360.202 Beneficiaries
360.203 Permitted Uses of Trust Fund Monies
360.204 Market Rate Developments

SUBPART C: APPLICATION

Section
360.301 Application
360.302 Form
360.303 Review
360.304 Initial Contact
360.305 Site and Market Study/Rental Analysis
360.306 Feasibility Determination (Repealed)
360.307 Staff Recommendation
360.308 Advisory Commission
360.309 Authority Determination
360.310 Conditional Commitment

SUBPART D: NOTICE

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF PROPOSED AMENDMENT

Section
360.401 Notification by Authority
360.402 Comments and Responses

SUBPART E: RECIPIENT

Section
360.501 Eligible Applicants (Repealed)
360.502 Land Trusts
360.503 Books and Records
360.504 Audits
360.505 Annual Financial Report
360.506 Furnishing Information
360.507 Standards for Approval of Conveyance

SUBPART F: LOANS AND GRANTS

Section
360.601 Maximum Loan Amount and Priority
360.602 Maximum Grant Amount
360.603 Increase Above Maximum Loan or Grant Amount
360.604 Amortization
360.605 Recapture of Assistance
360.606 Prepayment of Loan

SUBPART G: CONSTRUCTION

Section
360.701 Design and Construction Standards

SUBPART H: MARKETING AND MANAGEMENT

Section
360.801 Marketing and Management
360.802 Marketing and Management Plans
360.803 Maintenance
360.804 Cost of Service

SUBPART I: TENANTS AND OCCUPANCY

Section
360.901 Displacement
360.902 Relocation Plan
360.903 Tenant Selection Plan and Participant Selection Plan
360.904 Income and Housing Expense Limits
360.905 Non-Discrimination

SUBPART J: ENERGY EFFICIENCY

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF PROPOSED AMENDMENT

Section
360.1001 Standards

SUBPART K: CERTIFICATIONS

Section
360.1101 Environmental Assessment
360.1102 Other Laws

AUTHORITY: Implementing Sections 4 and 7(e) of the Illinois Affordable Housing Act [310 ILCS 65/4 and 7(e)] and authorized by Sections 7.19 and 7.25 of the Illinois Housing Development Act [20 ILCS 3805/7.19 and 7.25].

SOURCE: Emergency rules adopted at 14 Ill. Reg. 2094, effective January 22, 1990, for a maximum of 150 days; adopted at 14 Ill. Reg. 9117, effective May 24, 1990; amended at 15 Ill. Reg. 17088, effective November 19, 1991; emergency amendment at 18 Ill. Reg. 2124, effective January 12, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 8663, effective May 25, 1994; amended at 22 Ill. Reg. 4321, effective February 4, 1998; amended at 23 Ill Reg. _____, effective _____.

SUBPART B: USES

Section 360.203 Permitted Uses of Trust Fund Monies

Trust Fund Monies may be used for the following purposes:

a) to make secured, unsecured or deferred repayment Loans;
b) to make zero percent or low interest Loans;
c) to make Grants, payments or subsidies for the acquisition, construction, rehabilitation, development, operation, insurance or retention of Developments or Single-Family Developments or to pay predevelopment expenses;
d) to purchase mortgage participation certificates representing an undivided interest in specified, first-lien conventional residential Illinois mortgages which are underwritten, insured, guaranteed or purchased by the Federal Home Loan Mortgage Corporation;
e) to be used in investments which reduce the risk associated with fluctuations in interest rates or the market price of investments or any other investments which are lawful for other fiduciaries in the State to make;
f) to provide assistance for Developments which are occupied partly by Low-Income Households and Very-Low Income Households and partly by households not qualifying as Low-Income Households and Very Low-Income Households;
g) to purchase first and second mortgages;
h) to make Grants for the provision of technical assistance, outreach and building of an Applicant's capacity to develop Affordable Housing;
i) to pay fees of the Program Administrator not to exceed the amount

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF PROPOSED AMENDMENT

established by the General Assembly ~~$500,000~~ each fiscal year in connection with the operation of the Program; and

j) to be held, pledged, applied or dedicated pursuant to Sections 8(b), (c), (d) and 9 of the Affordable Housing Act in connection with Affordable Housing Program Trust Fund Bonds or Notes issued pursuant to the Act. Trust Fund Monies used pursuant to this subsection 360.203(j) shall be governed by the Affordable Housing Bond Program Rules.

(Source: Amended at 23 Ill. Reg. _____, effective _____)

SUBPART D: NOTICE

Section 360.401 Notification by Authority

a) Notice of Allocation
Prior to the presentation of an application to the Members, the Authority shall give written notice of the proposed allocation to the following persons and agencies:
1) the chairman of the county board of the county in which the proposed Development or Single-Family Development is to be located;
2) the mayor or other chief executive of the municipality, if any, in which the proposed Development or Single-Family Development is to be located;
3) the appropriate Clearinghouses; and
4) each member of the General Assembly from the legislative district in which the proposed Development or Single-Family Development is to be located.
If the application does not request Trust Fund Monies for a specific Development or Single-Family Development, the notice will be sent based on the location of the Applicant.

b) Forms
Notice under this Section shall be made on forms prepared by the Authority.

c) Contents
The notice shall set forth the name and address of the Applicant; the estimated amount of the proposed allocation; if applicable, the name and address of the proposed Development or Single-Family Development; type of any subsidies; the total number of units; and the type of Development or Single-Family Development (for example, elderly, family, or handicapped).

d) The Notification required by this Section shall be satisfied if another governmental entity provides public notice of an application in a manner acceptable to the Authority.

(Source: Amended at 23 Ill. Reg. _____, effective

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF PROPOSED AMENDMENT

_____)

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Food Stamps

2) Code Citation: 89 Ill. Adm. Code 121

3)

Section Numbers:	Proposed Action:
121.63	Amendment
121.91	Amendment
121.92	Amendment
121.145	New Section

4) Statutory Authority: Implementing Sections 12-4.4 through 12-4.6 and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-4.4 through 12-4.6 and 12-13].

5) A Complete Description of the Subjects and Issues involved: The Food and Nutrition Service has granted permission for the changes proposed in this rulemaking so that food stamp policy and State TANF policies are consistent in budgeting earned income on a quarterly basis. The changes proposed include a reduction in the standard deduction amount for TANF cash assistance food stamp households and use of a shelter standard for these households. These changes will result in a reduction of food stamp errors for TANF cash assistance food stamp cases.

6) Will this proposed rule replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed amendment contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives (if applicable): This rulemaking does not create or expand a State mandate.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning these rules within 45 days after this issue of the *Illinois Register*. All requests and comments should be submitted in writing to:

Ms. Susan Weir, Bureau Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue East
3rd Floor Harris Bldg.
Springfield IL 62762
Telephone number: (217) 785-9772

If because of physical disability you are unable to put comments into

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

writing, you may make them orally to the person listed above.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary form compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because: Changes were not anticipated at the time of the July 1998 agenda.

The full text of the Proposed Amendment(s) begins on the next page:

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

TITLE 89: SOCIAL SERVICES
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES
SUBCHAPTER b: ASSISTANCE PROGRAMS

PART 121
FOOD STAMPS

SUBPART A: APPLICATION PROCEDURES

Section
121.1 Application for Assistance
121.2 Time Limitations on the Disposition of an Application
121.3 Approval of an Application and Initial Authorization of Assistance
121.4 Denial of an Application
121.5 Client Cooperation
121.6 Emergency Assistance
121.7 Expedited Services
121.10 Interviews

SUBPART B: NON-FINANCIAL FACTORS OF ELIGIBILITY

Section
121.18 Work Requirement
121.19 Ending a Voluntary Quit Disqualification
121.20 Citizenship
121.21 Residence
121.22 Social Security Numbers
121.23 Work Registration/Participation Requirements
121.24 Individuals Exempt from Work Registration Requirements
121.25 Failure to Comply
121.26 Period of Sanction
121.27 Voluntary Job Quit
121.28 Good Cause for Voluntary Job Quit
121.29 Exemptions from Voluntary Quit Rule

SUBPART C: FINANCIAL FACTORS OF ELIGIBILITY

Section
121.30 Unearned Income
121.31 Exempt Unearned Income
121.32 Education Benefits
121.33 Unearned Income In-Kind
121.34 Lump Sum Payments and Income Tax Refunds
121.40 Earned Income
121.41 Budgeting Earned Income
121.50 Exempt Earned Income
121.51 Income from Work/Study/Training Programs

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

121.52 Earned Income from Roomer and Boarder
121.53 Income From Rental Property
121.54 Earned Income In-Kind
121.55 Sponsors of Aliens
121.57 Assets
121.58 Exempt Assets
121.59 Asset Disregards

SUBPART D: ELIGIBILITY STANDARDS

Section
121.60 Net Monthly Income Eligibility Standards
121.61 Gross Monthly Income Eligibility Standards
121.62 Income Which Must Be Annualized
121.63 Deductions From Monthly Income
121.64 Food Stamp Benefit Amount

SUBPART E: HOUSEHOLD CONCEPT

Section
121.70 Composition of the Assistance Unit
121.71 Living Arrangement
121.72 Nonhousehold Members
121.73 Ineligible Household Members
121.74 Strikers
121.75 Students
121.76 Households Receiving AFDC, SSI, Interim Assistance and/or GA - Categorical Eligibility

SUBPART F: MISCELLANEOUS PROGRAM PROVISIONS

Section
121.80 Fraud Disqualification (Renumbered)
121.81 Initiation of Administrative Fraud Hearing (Repealed)
121.82 Definition of Fraud (Renumbered)
121.83 Notification To Applicant Households (Renumbered)
121.84 Disqualification Upon Finding of Fraud (Renumbered)
121.85 Court Imposed Disqualification (Renumbered)
121.90 Monthly Reporting and Retrospective Budgeting
121.91 Monthly Reporting
121.92 Retrospective Budgeting
121.93 Issuance of Food Stamp Benefits
121.94 Replacement of the EBT Card or Food Stamp Benefits
121.95 Restoration of Lost Benefits
121.96 Uses For Food Coupons
121.97 Supplemental Payments
121.98 Client Training for the Electronic Benefits Transfer (EBT) System
121.105 State Food Program

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

121.120 Recertification of Eligibility
121.130 Residents of Shelters for Battered Women and their Children
121.131 Fleeing Felons and Probation/Parole Violators
121.135 Incorporation By Reference
121.140 Small Group Living Arrangement Facilities and Drug/Alcoholic Treatment Centers
121.145 Quarterly Reporting

SUBPART G: INTENTIONAL VIOLATIONS OF THE PROGRAM

Section
121.150 Definition of Intentional Violations of the Program
121.151 Penalties for Intentional Violations of the Program
121.152 Notification To Applicant Households
121.153 Disqualification Upon Finding of Intentional Violation of the Program
121.154 Court Imposed Disqualification

SUBPART H: FOOD STAMP EMPLOYMENT AND TRAINING PROGRAM

Section
121.160 Persons Required to Participate
121.162 Participation and Cooperation Requirements
121.164 Orientation
121.166 Assessment and Employability Plan
121.170 Job Search Component
121.172 Basic Education Component
121.174 Job Readiness Component
121.176 Work Experience Component
121.177 Illinois Works Component
121.178 Job Training Component
121.179 JTPA Employability Services Component
121.180 Grant Diversion Component
121.182 Earnfare Component
121.184 Sanctions
121.186 Good Cause for Failure to Cooperate
121.188 Supportive Services
121.190 Conciliation and Fair Hearings
121.200 Types of Claims (Recodified)
121.201 Establishing a Claim for Intentional Violation of the Program (Recodified)
121.202 Establishing a Claim for Unintentional Household Errors and Administrative Errors (Recodified)
121.203 Collecting Claim Against Households (Recodified)
121.204 Failure to Respond to Initial Demand Letter (Recodified)
121.205 Methods of Repayment of Food Stamp Claims (Recodified)
121.206 Determination of Monthly Allotment Reductions (Recodified)
121.207 Failure to Make Payment in Accordance with Repayment Schedule (Recodified)

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

121.208 Suspension and Termination of Claims (Recodified)

SUBPART I: WORK REQUIREMENT FOR FOOD STAMPS

Section
121.220 Work Requirement Components
121.221 Meeting the Work Requirement with the Earnfare Component
121.222 Volunteer Community Work Component
121.223 Work Experience Component
121.224 Supportive Service Payments to Meet the Work Requirement
121.225 Meeting the Work Requirement with the Illinois Works Component
121.226 Meeting the Work Requirement with the JTPA Employability Services

AUTHORITY: Implementing Sections 12-4.4 through 12-4.6 and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-4.4 through 12-4.6 and 12-13].

SOURCE: Adopted December 30, 1977; amended at 3 Ill. Reg. 5, p. 875, effective February 2, 1979; amended at 3 Ill. Reg. 31, p. 109, effective August 3, 1979; amended at 3 Ill. Reg. 33, p. 399, effective August 18, 1979; amended at 3 Ill. Reg. 41, p. 165, effective October 11, 1979; amended at 3 Ill. Reg. 42, p. 230, effective October 9, 1979; amended at 3 Ill. Reg. 44, p. 173, effective October 19, 1979; amended at 3 Ill. Reg. 46, p. 36, effective November 2, 1979; amended at 3 Ill. Reg. 47, p. 96, effective November 13, 1979; amended at 3 Ill. Reg. 48, p. 1, effective November 15, 1979; peremptory amendment at 4 Ill. Reg. 3, p. 49, effective January 9, 1980; peremptory amendment at 4 Ill. Reg. 9, p. 259, effective February 23, 1980; amended at 4 Ill. Reg. 10, p. 253, effective February 27, 1980; amended at 4 Ill. Reg. 12, p. 551, effective March 10, 1980; emergency amendment at 4 Ill. Reg. 29, p. 294, effective July 8, 1980, for maximum of 150 days; amended at 4 Ill. Reg. 37, p. 797, effective September 2, 1980; amended at 4 Ill. Reg. 45, p. 134, effective October 17, 1980; amended at 5 Ill. Reg. 766, effective January 2, 1981; amended at 5 Ill. Reg. 1131, effective January 16, 1981; amended at 5 Ill. Reg. 4586, effective April 15, 1981; peremptory amendment at 5 Ill. Reg. 5722, effective June 1, 1981; amended at 5 Ill. Reg. 7071, effective June 23, 1981; peremptory amendment at 5 Ill. Reg. 10062, effective October 1, 1981; amended at 5 Ill. Reg. 10733, effective October 1, 1981; amended at 5 Ill. Reg. 12736, effective October 29, 1981; amended at 6 Ill. Reg. 1653, effective January 17, 1982; amended at 6 Ill. Reg. 2707, effective March 2, 1982; amended at 6 Ill. Reg. 8159, effective July 1, 1982; amended at 6 Ill. Reg. 10208, effective August 9, 1982; amended at 6 Ill. Reg. 11921, effective September 21, 1982; amended at 6 Ill. Reg. 12318, effective October 1, 1982; amended at 6 Ill. Reg. 13754, effective November 1, 1982; amended at 7 Ill. Reg. 394, effective January 1, 1983; codified at 7 Ill. Reg. 5195; amended at 7 Ill. Reg. 5715, effective May 1, 1983; amended at 7 Ill. Reg. 8118, effective June 24, 1983; peremptory amendment at 7 Ill. Reg. 12899, effective October 1, 1983; amended at 7 Ill. Reg. 13655, effective October 4, 1983; peremptory amendment at 7 Ill. Reg. 16067, effective November 18, 1983; amended at 7 Ill. Reg. 16169, effective November 22, 1983; amended at

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

8 Ill. Reg. 5673, effective April 18, 1984; amended at 8 Ill. Reg. 7249, effective May 16, 1984; peremptory amendment at 8 Ill. Reg. 10086, effective July 1, 1984; amended at 8 Ill. Reg. 13284, effective July 16, 1984; amended at 8 Ill. Reg. 17900, effective September 14, 1984; amended (by adding Section being codified with no substantive change) at 8 Ill. Reg. 17898; peremptory amendment at 8 Ill. Reg. 19690, effective October 1, 1984; peremptory amendment at 8 Ill. Reg. 22145, effective November 1, 1984; amended at 9 Ill. Reg. 302, effective January 1, 1985; amended at 9 Ill. Reg. 6804, effective May 1, 1985; amended at 9 Ill. Reg. 8665, effective May 29, 1985; peremptory amendment at 9 Ill. Reg. 8898, effective July 1, 1985; amended at 9 Ill. Reg. 11334, effective July 8, 1985; amended at 9 Ill. Reg. 14334, effective September 6, 1985; peremptory amendment at 9 Ill. Reg. 15582, effective October 1, 1985; amended at 9 Ill. Reg. 16889, effective October 16, 1985; amended at 9 Ill. Reg. 19726, effective December 9, 1985; amended at 10 Ill. Reg. 229, effective December 20, 1985; peremptory amendment at 10 Ill. Reg. 7387, effective April 21, 1986; peremptory amendment at 10 Ill. Reg. 7941, effective May 1, 1986; amended at 10 Ill. Reg. 14692, effective August 29, 1986; peremptory amendment at 10 Ill. Reg. 15714, effective October 1, 1986; Sections 121.200 thru 121.208 recodified to 89 Ill. Adm. Code 165 at 10 Ill. Reg. 21094; peremptory amendment at 11 Ill. Reg. 3761, effective February 11, 1987; emergency amendment at 11 Ill. Reg. 3754, effective February 13, 1987, for a maximum of 150 days; emergency amendment at 11 Ill. Reg. 9968, effective May 15, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 10269, effective May 22, 1987; amended at 11 Ill. Reg. 10621, effective May 25, 1987; peremptory amendment at 11 Ill. Reg. 11391, effective July 1, 1987; peremptory amendment at 11 Ill. Reg. 11855, effective June 30, 1987; emergency amendment at 11 Ill. Reg. 12043, effective July 6, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 13635, effective August 1, 1987; amended at 11 Ill. Reg. 14022, effective August 10, 1987; emergency amendment at 11 Ill. Reg. 15261, effective September 1, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 15480, effective September 4, 1987; amended at 11 Ill. Reg. 15634, effective September 11, 1987; amended at 11 Ill. Reg. 18218, effective October 30, 1987; peremptory amendment at 11 Ill. Reg. 18374, effective October 30, 1987; amended at 12 Ill. Reg. 877, effective December 30, 1987; emergency amendment at 12 Ill. Reg. 1941, effective December 31, 1987, for a maximum of 150 days; amended at 12 Ill. Reg. 4204, effective February 5, 1988; amended at 12 Ill. Reg. 9678, effective May 23, 1988; amended at 12 Ill. Reg. 9922, effective June 1, 1988; amended at 12 Ill. Reg. 11463, effective June 30, 1988; amended at 12 Ill. Reg. 12824, effective July 22, 1988; emergency amendment at 12 Ill. Reg. 14045, effective August 19, 1988, for a maximum of 150 days; peremptory amendment at 12 Ill. Reg. 15704, effective October 1, 1988; peremptory amendment at 12 Ill. Reg. 16271, effective October 1, 1988; amended at 12 Ill. Reg. 20161, effective November 30, 1988; amended at 13 Ill. Reg. 3890, effective March 10, 1989; amended at 13 Ill. Reg. 13619, effective August 14, 1989; peremptory amendment at 13 Ill. Reg. 15859, effective October 1, 1989; amended at 14 Ill. Reg. 729, effective January 1, 1990; amended at 14 Ill. Reg. 6349, effective April 13, 1990; amended at 14 Ill. Reg. 13202, effective August 6, 1990; peremptory amendment at 14 Ill. Reg. 15158, effective October 1, 1990; amended at 14 Ill. Reg. 16983, effective

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

September 30, 1990; amended at 15 Ill. Reg. 11150, effective July 22, 1991; amended at 15 Ill. Reg. 11957, effective August 12, 1991; peremptory amendment at 15 Ill. Reg. 14134, effective October 1, 1991; emergency amendment at 16 Ill. Reg. 757, effective January 1, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 10011, effective June 15, 1992; amended at 16 Ill. Reg. 13900, effective August 31, 1992; emergency amendment at 16 Ill. Reg. 16221, effective October 1, 1992, for a maximum of 150 days; peremptory amendment at 16 Ill. Reg. 16345, effective October 1, 1992; amended at 16 Ill. Reg. 16624, effective October 23, 1992; amended at 17 Ill. Reg. 644, effective December 31, 1992; amended at 17 Ill. Reg. 4333, effective March 19, 1993; amended at 17 Ill. Reg. 14625, effective August 26, 1993; emergency amendment at 17 Ill. Reg. 15149, effective September 7, 1993, for a maximum 150 days; peremptory amendment at 17 Ill. Reg. 17477, effective October 1, 1993; expedited correction at 17 Ill. Reg. 21216, effective October 1, 1993; amended at 18 Ill. Reg. 2033, effective January 21, 1994; emergency amendment at 18 Ill. Reg. 2509, effective January 27, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 3427, effective February 28, 1994; amended at 18 Ill. Reg. 8921, effective June 3, 1994; amended at 18 Ill. Reg. 12829, effective August 5, 1994; amended at 18 Ill. Reg. 14103, effective August 26, 1994; amended at 19 Ill. Reg. 5626, effective March 31, 1995; amended at 19 Ill. Reg. 6648, effective May 5, 1995; emergency amendment at 19 Ill. Reg. 12705, effective September 1, 1995, for a maximum of 150 days; peremptory amendment at 19 Ill. Reg. 13595, effective October 1, 1995; amended at 20 Ill. Reg. 1593, effective January 11, 1996; peremptory amendment at 20 Ill. Reg. 2229, effective January 17, 1996; amended at 20 Ill. Reg. 7902, effective June 1, 1996; amended at 20 Ill. Reg. 11935, effective August 14, 1996; emergency amendment at 20 Ill. Reg. 13381, effective October 1, 1996, for a maximum of 150 days; emergency amendment at 20 Ill. Reg. 13668, effective October 8, 1996, for a maximum of 150 days; amended at 21 Ill. Reg. 3156, effective February 28, 1997; amended at 21 Ill. Reg. 7733, effective June 4, 1997; recodified from the Department of Public Aid to the Department of Human Services at 21 Ill. Reg. 9322; emergency amendment at 22 Ill. Reg. 1954, effective January 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 5502, effective March 4, 1998; amended at 22 Ill. Reg. 7969, effective May 15, 1998; emergency amendment at 22 Ill. Reg. 10660, effective June 1, 1998, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 12167, effective July 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 16230, effective September 1, 1998; amended at 22 Ill. Reg. 19787, effective October 28, 1998; emergency amendment at 22 Ill. Reg. 19934, effective October 28, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 16230, effective September 1, 1998; amended at 23 Ill. Reg. _____, effective _____.

SUBPART D: ELIGIBILITY STANDARDS

Section 121.63 Deductions From Monthly Income

a) The deductions described in this Section shall be allowed in the determination of the adjusted net monthly food stamp income.

b) Earned Income Deduction. Eighty percent of total gross earned income

is considered. See Sections 121.40 through 121.54 for a description of earned income.

c) Standard Deduction. The standard deduction is $134 ~~$134.00~~ per household per month except for food stamp cases in Quarterly Reporting (see 89 Ill. Adm. Code 112.302) and food stamp cases in which all members receive TANF cash assistance. These households receive a reduced amount of the standard deduction as determined by the Food and Nutrition Service.

d) Dependent Care Deduction

1) The dependent care deduction consists of payments for the care of a child or other dependent when necessary for a household member to accept or continue employment or to seek employment in compliance with the job search criteria (contained in 89 Ill. Adm. Code 112.70 through 112.73) or to attend training or pursue education which is preparatory for employment.

2) The amount of the deduction is to be determined by the actual costs for care and is not to exceed $200 per month for each child under age 2 and $175 per month for each other ~~$160.00--per--month for each~~ dependent household member.

e) Child Support Deduction. The child support deduction is the amount of legally obligated child support paid by a household member to or for a nonhousehold member.

f) Shelter Costs Deduction

1) The shelter deduction is the amount of shelter costs that exceed 50% of the household's total income after the allowable deductions in subsections (b), (c), ~~and~~ (d), and (e) of this Section have been made. The shelter deduction shall not exceed $250 ~~$250.00~~.

2) If the household contains a member who is elderly or disabled, as defined at 7 CFR 271.2 (1990) and Section 121.61, there is no limit on the amount of the excess shelter deduction.

3) Households in which all members are homeless, but are not receiving free shelter throughout the month, are entitled to a $143 ~~$143.00~~ per month homeless shelter costs deduction. Homeless households with shelter costs which exceed the homeless shelter costs deduction are allowed to claim the higher shelter costs, if these costs are verified. Homeless households which receive free housing and utilities throughout the month are not entitled to the homeless shelter costs deduction.

4) Shelter costs include only the following:

A) the shelter standard for food stamp households in which all members receive TANF cash assistance. The amount of the shelter standard is determined by the average shelter costs for the baseline month for clients living in the county groups established for the TANF cash payment levels (see 89 Ill. Adm. Code 112.252, 112.253 and 112.254). The amounts of the averages are periodically updated. Within the county groupings, there is a shelter standard amount for clients living in public housing and a shelter standard amount for persons not living in public housing. No other allowance for shelter expenses is given to these households.

B) ~~A)~~ continuing charges for the shelter occupied by the household (rent, mortgage and other charges leading to the ownership of the shelter, including interest on such charges);

C) ~~B)~~ property taxes, State and local assessments and insurance on the structure itself; and

D) ~~C)~~ utility costs, as described in subsection (f) of this Section.

5) Shelter costs for a home temporarily unoccupied by the household because of employment or training away from home, illness or abandonment caused by a natural disaster or casualty loss, if:

A) the household intends to return to the home;

B) the current occupants of the home, if any, are not claiming the shelter costs for food stamp purposes; and

C) the home is not leased or rented during the absence of the household.

6) Charges for repair of a home which was damaged or destroyed due to a natural disaster. Shelter costs shall not include repair charges which have been or will be reimbursed by private or public relief agencies, insurance companies or any other source.

g) Utility Costs

1) Utility costs include:

A) the cost of heating and cooking fuel, air conditioning, electricity, water, sewerage, garbage and trash collection fees;

B) basic service fee for one telephone (including tax on the basic fee) of $27 ~~$27.00~~; and

C) fees charged by the utility provider for initial installation.

2) Utility deposits are not considered to be utility costs.

3) Those households which are billed for heating or air conditioning, or both, separately from their rent or mortgage may claim the standard utility allowance of $209 ~~$209.00~~. Households living in rental housing who are billed on a regular basis by a landlord for costs for heating or air conditioning, or both, may use the standard utility allowance if utility usage is determined through a meter or otherwise is verifiable or if the charge for heating or air conditioning, or both, is separate and identifiable. If the standard utility allowance is used, then no other utility costs may be claimed. If actual utility costs exceed the standard utility allowance, then actual, verified costs may be claimed, except that if a separately-billed phone expense is claimed only the basic telephone allowance of $27 ~~$27.00~~ per month is allowed. The client may switch between the standard utility allowance and actual utility costs only at

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

recertification.

4) However, during the heating or cooling season, a household that is billed less often than monthly for its costs for heating or air conditioning, or both, but is otherwise eligible to use the standard utility allowance, may continue to use the standard utility allowance between billing months.

5) Households in public housing or privately owned rental units which receive a bill for over-usage are not entitled to use the standard utility allowance. When households (as defined at 7 CFR 273.1(a) (1990)) live together, the standard utility allowance shall be divided equally among the households that contribute toward the utility costs whether or not each household participates in the program.

6) Households whose expense for heat or air conditioning, or both, is covered by indirect energy assistance payments under the Illinois Home Energy Assistance Program (47 Ill. Adm. Code 100) shall be entitled to the standard utility allowance (7 CFR 273.9 and 273.10(d)(6) (1990)). The provisions of subsection (f)(3) of this Section are applicable to households whose expenses for heating or air conditioning, or both, are covered by indirect energy assistance payments.

7) Those households which are not billed separately for either heat or air conditioning are not entitled to claim the standard utility allowance but may claim the actual utility amounts for which they are billed separately, subject to the $27 ~~$27.00~~ per month limitation for telephone expense.

h) Excess Medical Deduction. A deduction for excess medical expenses shall be allowed for households which contain an elderly or disabled member as defined at 7 CFR 271.2 (1990) and Section 121.61. The medical expenses incurred by the qualifying household member which are over $35 will be deducted, if the expenses will not be reimbursed by insurance or a third party.

(Source: Amended at 23 Ill. Reg. _____, effective _____)

SUBPART F: MISCELLANEOUS PROGRAM PROVISIONS

Section 121.91 Monthly Reporting

a) Individuals who receive income from a sheltered workshop and individuals who receive public assistance benefits under the Aid to the Aged, Blind or Disabled Program as either an Aged, Blind, or Disabled case are excluded from monthly reporting, unless another household member is required to report monthly, as defined in 7 CFR 273.21 and subsections (b)(1), (2) and (3) of this Section.

b) Excluding TANF cash assistance clients who report quarterly (see Section 121.145), the ~~The~~ following food stamp households are required

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

to report monthly:

1) all households having at least one member receiving earned income (see Section 121.40(b));

2) households having at least one member receiving Unemployment Insurance Benefits (UI);

3) households having at least one member who has lost employment within the last three months.

c) Migrant households in the migrant job stream do not have to report monthly.

d) The report shall include:

1) income and other circumstances relevant to the amount of the food stamp allotment; and

2) changes in income, household composition and bank accounts affecting eligibility which the household expects to occur in the current month or future months or which occurred in the budget month.

e) With monthly reporting, the household is required to provide verification of the following information each month:

1) gross earned income (for example, pay stubs); and

~~2) income and assets of an alien's sponsor and the sponsor's spouse; and~~

2)~~3)~~ questionable information (information ~~information~~ is considered questionable if information on the Monthly Report does not agree with statements of the recipient, other information on the Monthly Report or other information received by the local office).

f) The household is required to provide verification of gross unearned income each month, if the information has changed since the last report.

g) If the household does not provide the required verifications, the following actions are taken:

1) earned income - the Monthly Report is considered incomplete and food stamp benefits are suspended;

2) all other required verifications:

A) benefits are decreased, if the unverified reported change results in a decrease; or

B) if benefits would increase as a result of the unverified reported change, then no action is taken.

h) All food stamp households, which must report monthly, shall have benefits calculated by considering income and attendant circumstances on a retrospective basis. ~~except those participating in the AFDC Income Budgeting Project (see Section 170.50). The budgeting method used to calculate the cash grant is used to calculate the household's food stamp benefit level.~~

i) The Monthly Report must be received or postmarked by the seventh day of the next fiscal month or the first workday following the seventh day of the next fiscal month when the seventh is a Saturday, Sunday or holiday. If a household files a complete report after the scheduled

due date but before the household has been terminated, the household shall be reinstated, if determined eligible. (See 89 Ill. Adm. Code 101.20 for a definition of "fiscal month".)

j) At recertification, the household must complete a Request for Food Stamps. This Request for Food Stamps, along with the Monthly Report form, is the application for recertification.

k) In lieu of a monthly report, General Assistance (GA) recipients in the City of Chicago, who are food stamp heads of households, must comply with a review of their food stamp eligibility which will occur in conjunction with any redetermination of General Assistance. (See 89 Ill. Adm. Code 114.420.) The review will cover those elements specified in subsection (d) of this Section. Verification of eligibility factors will be required as specified in subsection (e) of this Section. This review is in addition to regular recertification which will occur once every 12 months.

(Source: Amended at 23 Ill. Reg. _____, effective _____)

Section 121.92 Retrospective Budgeting

a) At initial application, income and attendant circumstances shall be budgeted on a prospective basis before beginning retrospective budgeting. Shelter costs shall be prospectively budgeted at all times.

b) All food stamp households, except migrant households who are in the migrant job stream, households where all adult members are elderly or disabled as defined at Section 121.61 and having no earned income or having only exempt earned income, households where all members are homeless and cases in quarterly reporting, shall have income and attendant circumstances, except shelter costs, budgeted on a retrospective basis. Shelter costs shall be prospectively budgeted.

c) For households where the head of the household receives cash assistance from the Department, eligibility for food stamps is first determined on a prospective basis for all eligibility factors. If eligible on this prospective basis, the actual amount of benefits the household is entitled to receive shall be determined by budgeting income and attendant circumstances, except shelter costs, retrospectively. Shelter costs shall be budgeted prospectively. For TANF and RRA households eligible on a prospective basis, the benefit amount is computed in the same manner as the cash payment beginning the second regular month of cash assistance.

d) For households where the head of the household does not receive cash assistance from the Department, eligibility and the amount of benefits shall be determined retrospectively. Shelter costs shall be budgeted prospectively.

~~a) All food stamp households, except migrant households who are in the migrant job stream, shall have income and attendant circumstances, except shelter costs, budgeted on a retrospective basis. Shelter costs shall be prospectively budgeted.~~

~~b) For households where the head of household receives cash assistance from the Department:~~

~~1) Eligibility for food stamps is first determined on a prospective basis for all eligibility factors. If eligible on this prospective basis, the actual amount of benefits the household is entitled to receive shall be determined by budgeting income and attendant circumstances, except shelter costs, retrospectively. Shelter costs shall be budgeted prospectively. For AFDC or RRA households eligible on a prospective basis, the benefit amount is computed in the same manner as the cash payment beginning the second regular month of cash assistance.~~

~~2) At initial application, however, income and attendant circumstances shall be budgeted prospectively for two months before beginning retrospective budgeting in the third month, except for households whose earnings have been reduced due to a strike, voluntary quit, voluntary reduction in wages or who have less income from an assistance program because of an overpayment of Social Security Administration (SSA), SSI, AFDC or General Assistance.~~

~~c) For households where the head of household does not receive cash assistance from the Department:~~

~~1) Eligibility and the amount of benefits shall be determined retrospectively at all times. However, at initial application, households which will suffer serious hardship shall have eligibility and the amount of benefits determined by budgeting income and attendant circumstances prospectively for two months before beginning retrospective budgeting. Households which will suffer serious hardship are:~~

~~A) Households which have gained or expect to gain a new household member in the month of application;~~

~~B) Households entitled to expedited service, determined prospectively, for the month of application;~~

~~C) Households applying for cash assistance from the Department at the same time they are applying for food stamps;~~

~~D) Households who have lost their source of income prior to applying for food stamps or whose source of income has been significantly reduced prior to applying for food stamps. Income has been significantly reduced if the reduced income (minus 10% of earned income for work expenses) is less than the applicable AFDC Payment Level for that family size.~~

~~2) Households whose earnings have been reduced due to a strike, voluntary quit, voluntary reduction in wages or who have less income from an assistance program because of an overpayment of Social Security Administration (SSA) or SSI benefits are not entitled to consideration as a serious hardship household.~~

e)~~d)~~ If a household becomes ineligible for food stamps due to a periodic

increase in recurring income (for example, a wage earner is paid every Friday and there are five rather than four paydays in a budget month) the household shall be suspended for a month rather than terminated.

f)~~e)~~ The budget month is the fiscal month from which the Department uses actual income and attendant circumstances, except shelter costs which are budgeted prospectively, to determine the amount of benefits the household is entitled to receive. The payment month is the fiscal month which the food stamp benefits cover. The payment month is the second fiscal month following the budget month for cases subject to retrospective budgeting.

g)~~f)~~ The budget month and payment month for each food stamp case are determined by the schedule the household is in, which schedule also governs the approximate availability ~~mailing~~ date of the food stamp benefits:

SCHEDULE NUMBER	BUDGET MONTH AND PAYMENT MONTH DATES
00	1st through last Day of Calendar Month
01	1st through last Day of Calendar Month
02	1st through last Day of Calendar Month
03	1st through last Day of Calendar Month
04	7th through 6th Day of Calendar Month
05	10th through 9th Day of Calendar Month
06	14th through 13th Day of Calendar Month
07	17th through 16th Day of Calendar Month
08	20th through 19th Day of Calendar Month
09	22nd through 21st Day of Calendar Month

h)~~g)~~ The above table applies to all food stamp households whether or not they report monthly, and food stamp benefits are available ~~mailed~~ at or near the beginning of the payment month.

(Source: Amended at 23 Ill. Reg. _____, effective _____)

Section 121.145 Quarterly Reporting

a) On a quarterly basis, all TANF cash assistance units which contain a member who is employed or who has lost employment within the last three months must submit a completed written report form to the Department. The food stamp household's income, assets, family composition and other factors pertinent to eligibility for the budget month, and any changes in these factors which the unit expects to occur in the current month or in future months, shall be reported.

b) Food stamp households which must report quarterly shall have benefits calculated for three months by considering income and attendant circumstances on a prospective basis.

c) Earnings shall be budgeted prospectively for a three-month period

based on the quarterly report provided by the client. Income averaging will be used to determine the amount of income to budget for a three-month period.

d) Clients who experience a decrease in income below the amount anticipated may be eligible for supplemental food stamp benefits. A written request for supplemental TANF cash benefits is also considered a request for supplemental food stamp benefits. Eligibility for supplemental food stamp benefits may exist if the gross earned (minus self-employment business expenses, if any) and unearned income (including the assistance payment) received from all sources for the payment month is less than the TANF payment level for an assistance unit of comparable size. If these conditions are met, the amount of food stamp benefits that the client is eligible to receive for the payment month is determined using the amount of income anticipated for the payment month. The amount of the supplemental food stamp benefit is the difference.

e) Clients who experience an increase in income above the amount anticipated will not be referred for an overpayment based on the increased income.

f) The Department will determine if eligibility continues and process any adjustments to the food stamp benefit level once the completed quarterly report is received. The Department will notify the household of any changes in the benefit level and the reason or reasons for the change. The notification will be mailed to arrive no later than the day the food stamp benefits would be available, if the food stamp benefit level is being reduced or terminated as a result of information contained in the report.

g) Food stamp benefits may be terminated if the Department does not receive the quarterly report or receives only an incomplete report. The Department must send the household a notice of the action to arrive not later than the date the benefits would have been available if the Department had received a completed report on time. The Department will promptly notify the client of the right to a fair hearing and the right to have benefits reinstated if the household is found ineligible or eligible for an amount less than that of the prior month. Benefits will be reinstated to the level of the prior month, if a hearing is requested on or before the date of change or within 10 calendar days after the date of notice, whichever is later.

h) Eligibility for the entire three-month period will be determined, if a completed report form is received by the end of the first payment month of the three-month period for which the report is used to determine eligibility.

i) Eligibility for the month of receipt and the third month, if applicable, will be determined, if a completed report form is received after the last calendar day of the first payment month of the three-month period for which the report is used to determined eligibility. Eligibility for food stamp benefits for the first payment month of the three-month period shall not exist.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED AMENDMENTS

i) Persons who are required to file quarterly reports will be notified of their responsibility, receive a complete explanation of the requirements and be informed of the due date for the first report.

(Source: Added at 23 Ill. Reg. _____, effective _____)

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

1) Heading of the Part: Internet Filing of Illinois Individual Income Tax Returns

2) Code Citation: 86 Ill. Adm. Code 106

3)

Section Numbers:	Proposed Action:
106.100	New Section
106.110	New Section
106.120	New Section
106.130	New Section
106.200	New Section
106.300	New Section
106.400	New Section

4) Statutory Authority: 35 ILCS 5, 20 ILCS 2505/39c-1a

5) A Complete Description of the Subjects and Issues Involved: Allows for the filing of Individual Income Tax Returns via the Internet. Allows for the acceptance of electronic signatures. Sets forth parameters of pilot program.

6) Will this rulemaking replace any emergency rulemaking currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this rulemaking contain incorporations by reference? No

9) Are there any other proposed rulemakings pending on this Part? No

10) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this notice to:

Melanie Jarvis
Associate Counsel
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield, Illinois 62794
(217) 782-6996

12) Initial Regulatory Flexibility Analysis:

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

A) Types of small businesses, small municipalities and not for profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: Same as those required of other individual income taxpayers. See 35 ILCS 5.

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because: It is a pilot program.

The full text of the Proposed Rule begins on the next page:

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 106: INTERNET FILING OF ILLINOIS INDIVIDUAL INCOME TAX RETURNS

SUBPART A: INTERNET RETURNS

Section
106.100 Composition of an Internet Return
106.110 Electronic Signature
106.120 Exclusions from Internet Filing
106.130 Where to Send Internet Returns

SUBPART B: INTERNET FILING PARTICIPANTS

Section
106.200 General Information

SUBPART C: BALANCE DUE RETURNS

Section
106.300 Balance Due General Information

SUBPART D: TRANSMISSION PROCEDURES

Section
106.400 Confirmation of Internet Returns

AUTHORITY: Implementing the Illinois Income Tax Act [35 ILCS 5] and the Illinois Civil Administrative Code [20 ILCS 2505/39c-1a].

SOURCE: Adopted at 23 Ill. Reg. _____, effective _____.

SUBPART A: INTERNET RETURNS

Section 106.100 Composition of an Internet Return

a) An eligible Internet return consists of data transmitted to the Department electronically via the Internet, including an electronic signature. An eligible return may contain paper documents that are requested to be sent to the Department, or retained by the taxpayer for verification. In total, eligible Internet returns contain the same information as traditionally filed paper documents.
b) Forms and schedules included in an eligible return that can be transmitted via the Internet include, but are not limited to, the

following:
1) IL-1040, Illinois Individual Income Tax Return,
2) W-2, Wage and Tax Statement, and
3) W-2G, Statement for Certain Gambling Winnings.

c) See Section 106.120 of this Part for the limitations on persons who can file via the Internet.

Section 106.110 Electronic Signature

a) The taxpayer's signature code, consisting of the taxpayer's social security number and Illinois drivers license or identification number issued by the Secretary of State, is to be used in lieu of a written signature when filing eligible returns, forms or other documents with the Department via the Internet.
b) Transmitting a valid signature code as part of an Internet filing has the same legal effect as if the taxpayer had signed the eligible return or other documents transmitted as part of that Internet filing.
c) The taxpayer's signature code will be transmitted to the Department at the beginning of the Internet filing process and will remain valid throughout the process and apply to all subsequent screens transmitted to the Department. This includes, but is not limited to, the screen containing the verification of information contained within the eligible return (penalties of perjury statement) and the screen containing a request for the Department to show the taxpayer his or her return after filing for the purpose of printing a copy.
d) Internet filed eligible returns and other documents will be considered unsigned unless both components of the taxpayer's signature code are transmitted and received by the Department as part of the Internet filing. (See 35 ILCS 5/503.)
e) The signature code is considered to be valid until:
1) The taxpayer notifies the Department that the signature code has been compromised, or
2) The Department determines that the signature code has been compromised.

Section 106.120 Exclusions from Internet Filing

Taxpayers filing the following types of returns are excluded from Internet filing:
a) Returns requiring forms or schedules not listed in Section 106.100(b);
b) Returns that include Internal Revenue Service (IRS) or Illinois forms 4852, or any other substitute wage and tax statement used to verify withholding;
c) Returns that require attachments to verify IL-1040 subtractions for federally taxed retirement and Social Security;
d) Returns that require attachments to verify IL-1040 subtractions for U.S. government obligations;
e) Returns that require attachments to verify IL-1040 subtractions for

military pay;
f) Decedent returns, including joint returns filed by surviving spouses;
g) Fiscal year returns;
h) Prior year returns;
i) Amended or corrected returns;
j) Returns with dollars and cents entries (only whole dollar amounts will be accepted);
k) Returns containing more than:
1) 20 W-2s
2) 30 W-2Gs
3) 30 statements;
l) Returns that contain any of the following entries:
1) Other subtractions
2) Estimated tax payments
3) Credit for taxes paid to other states
4) Schedule 1299-C credits
5) IL-2210 penalty;
m) Returns that contain exemptions for being either 65 years of age or older or legally blind; and
n) Nonresident and part-year resident returns requiring schedule NR.

Section 106.130 Where to Send Internet Returns

Internet filed eligible returns will be transmitted via the Internet to the Illinois Department of Revenue server in Springfield, Illinois.

SUBPART B: INTERNET FILING PARTICIPANTS

Section 106.200 General Information

a) Only taxpayers who have been authorized as Internet Filers may participate and file their eligible return with the Department via the Internet.
b) An Internet Filer is a taxpayer authorized to file eligible returns via the Internet. A taxpayer is authorized to file such returns once they receive an Access Code from the Department. Internet Filers will receive one Access Code per return to be filed. Therefore, Internet Filers who are married and file joint returns will receive only one Access Code.
c) The Department reserves the right to limit the number of participants and returns filed via the Internet.
d) The option of Internet filing will be available for participants until April 15 of the filing year or any other filing date designated by the Department on its Internet filing website.

SUBPART C: BALANCE DUE RETURNS

Section 106.300 Balance Due General Information

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

The Internet Filer is responsible for submitting payment of any balance due the Department, no later than April 15 of the filing year. (See 35 ILCS 5/601.) Failure to make full payment by this date will result in the imposition of interest and penalties. (See 35 ILCS 735/3-2 and 3-3.)

SUBPART D: TRANSMISSION PROCEDURES

Section 106.400 Confirmation of Internet Returns

a) Each eligible Internet return transmitted to the Department will normally be confirmed as filed after all required information is submitted. The date that the Department confirms receipt of the eligible return will constitute the filing date of the return.

b) Internet Filers cannot recall or intercept Internet filed eligible returns after the returns have been confirmed as received. If Internet Filers wish to change any entries after a return has been confirmed, a paper amended return, Form IL-1040-X, must be filed with the Department. (Also see 86 Ill. Adm. Code 100.9400(f)(3).)

c) When an eligible return has not been confirmed after several attempts, contact the Department for assistance by calling the telephone number provided in the IL-1040 booklet or by sending E-mail to the Department.

d) Unless an eligible return is confirmed as filed by the Department, it will not be considered a filed return.

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Prequalification and Bidder Responsibility

2) Code Citation: 44 Ill. Adm. Code 950

3)

Section Numbers:	Adopted Action:
950.110	Amendment
950.130	Amendment
950.140	Amendment
950.150	Amendment
950.170	Amendment
950.180	Amendment
950.200	Amendment
950.210	Amendment
950.300	Amendment
950.310	Amendment
950.320	Amendment
950.340	Amendment
950.350	Amendment
950.370	Amendment
950.390	Amendment
950.400	Amendment
950.410	Amendment
950.420	Amendment
950.440	Amendment
950.450	Amendment

4) Statutory Authority: Implementing and authorized by Section 9.06 of the Capital Development Board Act [20 ILCS 3105/9.06] and Sections 5-25 and 30-20 of the Illinois Procurement Code [30 ILCS 500/5-25 and 30-20].

5) Effective date of Rule: November 9, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this rule contain incorporations by reference? No

8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: July 31, 1998, 22 Ill. Reg. 14003

10) Has JCAR issued a Statement of Objections to this rule? No

11) Difference(s) between proposal and final version: In Section 950.170 (c), added the following: "Unless otherwise specified in writing by CDB, the term of prequalification shall be one year. When prequalification is

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

granted, the contractor will be notified in writing of the expiration date, which will also be entered on CDB's electronic program. CDB may grant a shorter term of prequalification by agreement with the contractor, when a determination is made that a shorter period is justified, or when a special prequalification is developed specifically for a certain project. CDB may, in its discretion, grant a longer period of prequalification when deemed appropriate in light of recent and relevant satisfactory project performance. Updated or new contractor information including the term of prequalification will be entered on CDB's electronic program weekly. The electronic program will be capable of, among other things, sorting contractors by trade to produce lists of contractors in the various trades. At the beginning of each month, a list of contractors whose prequalification expires in approximately 60 days will be generated".

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this amendment replace an emergency rule currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Amendments: Amending pertinent sections of this rule to reflect the requirements of the new Illinois Procurement Code.

16) Information and questions regarding this adopted rule shall be directed to:

Fredrick W. Hahn, Chief Counsel
Capital Development Board
3rd Floor, Wm. G. Stratton Bldg.
Springfield, Illinois 62706
217/782-0700

The full text of the Adopted Amendments begins on the next page:

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY MANAGEMENT
SUBTITLE B: SUPPLEMENTAL PROCUREMENT
CHAPTER XII: CAPITAL DEVELOPMENT BOARD

PART 950
PREQUALIFICATION AND BIDDER RESPONSIBILITY

SUBPART A: BIDDER RESPONSIBILITY

950.110 Purpose
950.120 Policy
950.130 Definitions
950.140 Special Projects
950.150 Confidentiality
950.160 Sources for Determining Responsibility
950.170 Processing of Contractor Prequalification and Bidder Responsibility and Renewal Applications ~~Application~~
950.180 Ineligibility

SUBPART B: SUSPENSION, DEBARMENT, MODIFICATION OF ABILITY TO BID, AND CONDITIONAL PREQUALIFICATION ~~RESPONSIBILITY-DETERMINATION~~

950.200 Actions Affecting Prequalification ~~Responsibility~~
950.210 Causes for Suspension, Debarment, Modification of Ability to Bid, or Conditional Prequalification ~~Responsibility-Determination~~

SUBPART C: APPLICATION OF CDB ACTION

950.300 General
950.310 Violation of CDB Order
950.320 Nullification of Prequalification ~~Responsibility~~
950.330 Denial of Award of Contract
950.340 Debarment
950.350 Reapplication for Prequalification ~~Responsibility-Determination~~
950.360 Extension of CDB Action
950.370 Effect on Current Contracts
950.380 Basis of Decisions
950.390 Settlement

SUBPART D: PROCEDURES

950.400 Review
950.410 Conference
950.420 Executive Director
950.430 Request for Reconsideration
950.440 Final Consideration
950.450 Burden of Proof

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

AUTHORITY: Implementing and authorized by Section 9.06 of the Capital Development Board Act [20 ILCS 3105/9.06] and authorized by Sections 5-25 and 30-20 of the Illinois Procurement Code [30 ILCS 500].

SOURCE: Adopted at 2 Ill. Reg. 30, p. 140, effective July 27, 1978; amended at 4 Ill. Reg. 9, p. 233, effective February 14, 1980; amended at 5 Ill. Reg. 1890, effective February 17, 1981; amended and codified at 8 Ill. Reg. 20299, effective October 1, 1984; emergency amendment at 9 Ill. Reg. 3821, effective March 5, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 10659, effective July 3, 1985; amended at 9 Ill. Reg. 17321, effective October 29, 1985; amended at 12 Ill. Reg. 9860, effective May 27, 1988; amended at 16 Ill. Reg. 12424, effective July 28, 1992; Part repealed, new Part adopted at 19 Ill. Reg. 15607, effective November 2, 1995; amended at 20 Ill. Reg. 15222, effective November 15, 1996; amended at 22 Ill. Reg. 20007, effective NOV 9 1998.

SUBPART A: BIDDER RESPONSIBILITY

Section 950.110 Purpose

The Capital Development Board (CDB) contracts shall be awarded only to responsible contractors. A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors and suppliers. In the absence of information clearly indicating that the prospective contractor is responsible, CDB shall make a determination of non-responsibility. Only responsible contractors shall be prequalified, and only prequalified contractors shall be permitted to bid on CDB projects. A determination of nonresponsibility may be made at any time prior to award of a contract.

(Source: Amended at 22 Ill. Reg. 20007, effective NOV 9 1998)

Section 950.130 Definitions

The following definitions shall apply to this Part:

"CDB" means the Capital Development Board.

"Contract Requirements" consist of any and all provisions of the CDB contract, which include, but are not limited to the following:

The timely submittal of all post-award requirements.

Material compliance with all applicable statutory requirements, local, State and federal laws, environmental and regulatory requirements and CDB Rules and Resolutions.

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

Payment of prevailing wage rate as determined by the Illinois Department of Labor.

Adherence to alternative dispute resolution provisions.

Material compliance with all Minority and Female Business Enterprise Act requirements and workforce hiring goals.

Timely payment to subcontractors and suppliers, unless rightfully withheld and the contractor does not request payment from CDB.

Material compliance with project schedules.

Maintaining applicable licensing requirements.

"Contractor" or "Bidder" means a firm that is in the business of constructing some or all aspects of building projects.

"Key Person" means any individual who holds 5% ~~7--1/2%~~ or more ownership interest in the firm. In the event the firm is owned by another corporation, partnership, trust or business association, any individual within that firm who holds a 5% ~~7-1/2%~~ or more ownership interest is considered a "key person". Regardless of ownership interest, any officer, partner or director is considered a "key person". This definition also includes any individual who assumes the responsibility of an officer, owner, partner, director, etc., regardless of ownership interest.

"New Bidder" is one that has no history of performance with CDB or who has been inactive for more than 3 years. Work history is determined in accordance with Section 950.170. Bidders who are newly formed business concerns having substantially the same owners, officers, directors, or beneficiaries as a previously existing non-responsible bidder will be declared non-responsible unless the new organization can demonstrate it was not set up for the purpose of avoiding an earlier declaration of non-responsibility.

"Performance Record" consists of but is not limited to the following:

Evidence of material compliance with all CDB contract requirements as referenced.

Data indicating the contractor has maintained quality workmanship and has met all contract requirements on previous contracts, private and public.

"Responsibility" is a determination made by CDB that the contractor is a responsible contractor. The determination may be made at any time

prior to award of a contract. Because responsibility is affected by such things as financial resources, performance records, and organizational and operational factors, all of which are subject to change, the initial determination of responsibility, made through evaluation of a new or renewal application to CDB, may be changed upon receipt of additional or different information. The contractor is required to inform CDB of any significant change to the information submitted in its application. Each prospective bidder must provide the CDB with adequate documentation of responsibility. The CDB will ordinarily provide forms for this information. The CDB may supplement this information from other sources and may require additional documentation at any time. For ease of administration, the basic information generally will be garnered through the contractor/bidder responsibility application in the case of new bidders. The responsibility determination will be verified annually through a renewal application unless the contractor fails to demonstrate a satisfactory performance record with CDB, as evidenced by performance evaluations, in which case the contractor must complete a contractor/bidder responsibility application. CDB reserves the right to demand completion of a contractor/bidder responsibility application at any time. A responsibility determination will also be verified on an ongoing basis through other information, including performance evaluations and reference contacts.

"Responsible Contractor" is a firm that:

Has adequate financial resources to perform the contract, or the ability to obtain them. This includes, but is not limited to, the ability to obtain required bonds and insurance from sureties and insurance companies acceptable to CDB.

Is able to comply with the contract requirements, considering the firm's other business obligations.

Has a satisfactory performance record.

Has a satisfactory record of integrity and business ethics.

Has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them. This includes, but is not limited to, qualified supervisory personnel and a work force qualified to meet CDB contract work force requirements.

Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them.

Has a current DHR number or application pending.

Is otherwise qualified and eligible to receive a contract award under applicable laws and regulations.

"Responsive Bidder" means a person or firm who has submitted a bid that conforms in all material respects to the invitation for bids. Those who submit bids which are not in conformance with the requirements of the invitation for bids will be determined to be non-responsive, which factors include, but are not limited to:

Failure to adequately demonstrate responsibility.

Submission of a bid late, in pencil, or in a manner that reveals the bid price prior to the bid opening (e.g., by facsimile).

Submission of a bid that is not in substantial conformance with the bidding documents.

Submission of bid security that is not in substantial compliance with the requirements of the bidding documents.

(Source: Amended at 22 Ill. Reg. 20007, effective NOV 9 1998)

Section 950.140 Special Projects

When CDB determines a construction project is so large or specialized that a special bidder prequalification and responsibility determination is appropriate, CDB may set appropriate standards of acceptability different from those set out herein. Other provisions of this Part shall remain applicable.

(Source: Amended at 22 Ill. Reg. 20007, effective NOV 9 1998)

Section 950.150 Confidentiality

Documents relating to responsibility determinations of a contractor shall be maintained by CDB in a separate file and shall remain confidential as records pertaining to occupational registration, except that they shall be subject to complete disclosure to the contractor to which they relate and to units of federal, State, or local government, including but not limited to law enforcement agencies. Nothing herein shall be construed to mean that CDB is required to disclose to the contractor the name of any person or organization filing a complaint or providing information to CDB when the complaint or information is used by CDB as the basis for further inquiry into the facts alleged. CDB may release to anyone the contractor's prequalification ~~responsibility determination~~ status with CDB.

(Source: Amended at 22 Ill. Reg. 20007, effective

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

NOV 9 1998)

Section 950.170 Processing of Contractor Prequalification and Bidder Responsibility and Renewal Applications ~~Application~~

a) New bidders must complete a contractor prequalification and bidder responsibility application. Unless the applicant is a new bidder or fails to demonstrate a satisfactory performance record with CDB as evidenced by performance evaluations, the responsibility determination will be verified by a renewal application.

b) Processing of contractor prequalification and bidder responsibility applications by CDB may require up to 45 days.

c) Applications for renewal will be sent to contractors 60 days before the expiration of a current prequalification ~~responsibility determination~~. Contractors who do not receive an application are responsible for contacting CDB prior to expiration to request an application. Such applications may require up to 45 days for processing depending upon disclosure of changes of information from the last application. Those applications nearing the end of the 45 day processing time will be notified accordingly. Unless otherwise specified in writing by CDB, the term of prequalification shall be one year. When prequalification is granted, the contractor will be notified in writing of the expiration date, which will also be entered on CDB's electronic program. CDB may grant a shorter term of prequalification by agreement with the contractor, when a determination is made that a shorter period is justified. CDB may, in its discretion, grant a longer period of prequalification when deemed appropriate in light of recent and relevant satisfactory project performance. Updated or new contractor information including the term of prequalification will be entered on CDB's electronic program weekly. The electronic program will be capable of, among other things, sorting contractors by trade to produce lists of contractors in various trades. At the beginning of each month, a list of contractors whose prequalification expires in approximately 60 days will be generated.

d) Applications may be sent to CDB by facsimile, provided that the original application is received by CDB within five business days. Applications sent by facsimile may require up to 45 days for processing.

e) CDB shall review and evaluate each application received, which may include one or more of the following actions:
   1) Reviewing to determine whether the application is filled out in accordance with the instructions provided.
   2) Contacting work references or any other possible sources of pertinent information.
   3) Requesting additional information from the applicant.
   4) Reviewing CDB contractor performance evaluations.
   5) Meeting with the applicant at the request of CDB or the applicant.

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

(Source: Amended at 22 Ill. Reg. 20007, effective NOV 9 1998)

Section 950.180 Ineligibility

A contractor, whether or not previously or currently prequalified and determined to be responsible by CDB, may be ineligible to bid under the following circumstances:

a) The contractor fails to meet statutory or regulatory requirements other than those set out in this Part.

b) The contractor has inadequate relevant experience in construction contracting to undertake CDB projects. In determining whether a contractor has adequate relevant experience, CDB will consider the size, type, number, and recency of past private and public contracts of the firm, its predecessors, or key persons with the firm.

c) The contractor has inadequate resources to meet the CDB contractual work force requirements. CDB shall not make a determination of responsibility for any contractor who has the appearance of being a broker, rather than a conventional construction business. In determining whether a contractor is a broker or a firm with inadequate resources, CDB may consider one or more of the following:
   1) Whether the contractor maintains and works from a separate conventional office which is not a residence or offices for other businesses.
   2) Whether the contractor maintains a full-time office and construction staff consisting of clerical, managerial, and supervisory personnel.
   3) Whether key persons with the firm have an educational and work experience background that makes the key persons sufficiently expert and knowledgeable to carry out CDB construction projects.
   4) Whether the contractor owns equipment, tools, machinery, materials or supplies used on construction projects.
   5) Whether the contractor has financial resources related to or generated by the construction business.
   6) Whether the contractor has historically subcontracted for a percentage of the work in construction contracts exceeding the requirements of CDB contracts.
   7) Whether key persons with the firm are engaged in non-construction businesses.

(Source: Amended at 22 Ill. Reg. 20007, effective NOV 9 1998)

SUBPART B: SUSPENSION, DEBARMENT, MODIFICATION OF ABILITY TO BID, AND CONDITIONAL PREQUALIFICATION ~~RESPONSIBILITY-DETERMINATION~~

Section 950.200 Actions Affecting Prequalification ~~Responsibility~~

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

At any time, CDB may consider whether action should be taken concerning prequalification ~~a responsibility determination~~. Actions that may be taken include one or more of the following:

a) Interim or Emergency Suspension or Modification
CDB may summarily suspend or modify a contractor's prequalification ~~responsibility determination~~ in accordance with Section 16 of the Capital Development Board Act [20 ILCS 3105/16].

b) Debarment
CDB may debar a contractor to exclude it from bidding for CDB contracts as authorized herein or by statute. The period of debarment shall be not less than five years and may be permanent when warranted or as authorized by law.

c) Modification of Ability to Bid
CDB may modify or limit a contractor's prequalification ~~ability to bid~~ as appropriate, including, but not limited to one or more of the following:
1) Limiting the dollar amount a contractor may bid for a specified period of time, or until a current contract is substantially complete.
2) Limiting the number of CDB contracts a contractor may enter into for a specified period of time, or until a current contract is substantially complete.
3) Limiting the aggregate dollar amount of contracts the contractor may enter into, considering both public and private contracts.
4) Imposing limits as set forth above pending performance on the contractor's next CDB contract(s), in instances where the contractor has no current CDB contracts.

d) Conditional Prequalification ~~Responsibility Determination~~
CDB may condition prequalification ~~a determination of responsibility~~ (which may be otherwise limited) on the contractor's successful utilization of a management plan, evaluations, conferences, or other methods designed to achieve satisfactory performance or compliance with contract requirements.

e) Suspension
CDB may suspend a contract or disqualify a contractor temporarily from contracting with CDB, for a period of time up to five years ~~one year~~. The contractor's failure to timely pursue administrative action as provided by Subpart D of this Part shall constitute consent of the contractor to CDB's action.

(Source: Amended at 22 Ill. Reg. 20007, effective NOV 9 1998)

Section 950.210 Causes for Suspension, Debarment, Modification of Ability to Bid, or Conditional Prequalification ~~Responsibility Determination~~

CDB may determine a contractor is not responsible and suspend, debar or otherwise modify or issue a conditional prequalification ~~determination~~ based

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

upon one or more of the following:

a) Failure to satisfactorily perform work on CDB contract(s), private contract(s), or other governmental contracts.

b) Breach of the terms of a CDB contract(s), private contract(s), or other governmental contract(s).

c) Making false or misleading statements, or failing to disclose or update significant information in connection with CDB procedures or documents, including but not limited to the contractor bidder responsibility application or renewal application.

d) Violation of civil or criminal federal or State statutes or administrative rules and regulations. In the case of criminal violations, indictment shall constitute adequate evidence for a determination of non-responsibility.

e) Financial instability which may be evidenced by bankruptcy, failure to timely pay subcontractors, difficulty in obtaining acceptable bonding, attempts to assign contract proceeds, or other indications of serious business management deficiencies.

f) Failure to understand, accept or utilize CDB procedures and standards, which results in the extraordinary expenditure of CDB resources.

g) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, or conduct indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a contractor.

h) Suspension, debarment, or limits on bidding contracts by any other governmental body.

i) Any other cause of so serious or compelling a nature that it affects the present responsibility of a contractor.

(Source: Amended at 22 Ill. Reg. 20007, effective NOV 9 1998)

SUBPART C: APPLICATION OF CDB ACTION

Section 950.300 General

Suspension, debarment, nullification of prequalification ~~responsibility~~, modification of prequalification ~~responsibility~~, or issuance of conditional prequalification ~~responsibility determination~~ by CDB is applicable to a contractor's direct contracts with CDB and to subcontracts on CDB projects, unless otherwise determined under Section 950.360.

(Source: Amended at 22 Ill. Reg. 20007, effective NOV 9 1998)

Section 950.310 Violation of CDB Order

When a contractor works as a subcontractor on a CDB project in violation of

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

Section 950.300, or otherwise violates terms or conditions imposed by CDB, CDB may extend the term of suspension, debarment, nullification, modification, or conditional prequalification ~~responsibility~~, or otherwise limit or condition the ability to bid on contracts with CDB.

(Source: Amended at 22 Ill. Reg. 20007, effective NOV 9 1998)

Section 950.320 Nullification of Prequalification ~~Responsibility~~

When CDB determines that a contractor has knowingly made a material misrepresentation in its application for prequalification ~~a--responsibility determindtion~~, the contractor may not re-apply to CDB for a period of three years.

a) When the contractor has not previously applied to CDB, or it failed to reapply, the three year period shall begin on the date of the submittal of the application.
b) When the contractor has been determined to be responsible in error, the three year period shall begin on the date the current responsibility determination was made.
c) CDB will notify the contractor of the nullity. The contractor may, within 30 days after notification, submit a written explanation with supporting documentation for CDB's review.
d) CDB may cancel awards or terminate any contracts awarded that were based upon the application with misrepresentations.
e) A material misrepresentation is made by knowingly submitting any untrue, misleading or deceptive information or document containing such information, or by the concealment, suppression or omission of any information, in or from an application, which causes CDB to act differently than it would have if it had known the undisclosed or true information.

(Source: Amended at 22 Ill. Reg. 20007, effective NOV 9 1998)

Section 950.340 Debarment

CDB may debar a contractor to exclude it from bidding on CDB projects as provided herein or otherwise provided by statute. CDB will consider debarment in cases so serious and egregious in nature that a loss in excess of five years up to a permanent loss of bidding privileges may be warranted. In addition to the causes listed in Section 950.210, causes for debarment may include but not be limited to multiple or repetitive criminal convictions or multiple non-responsibility determinations. Actions to debar a contractor shall not prevent CDB from taking any other action under this Part. Following a period of debarment, when a contractor submits a prequalification ~~responsibility~~ application to CDB, the application shall be deemed to be a first-time application rather than one for renewal.

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

(Source: Amended at 22 Ill. Reg. 20007, effective NOV 9 1998)

Section 950.350 Reapplication for Prequalification ~~Responsibility Determination~~

When a contractor submits a prequalification ~~responsibility~~ application to CDB during or following a period of debarment, suspension, nullification, modification of ability to bid, or conditional prequalification ~~responsibility determination~~, the contractor must affirmatively demonstrate its responsibility, including demonstrating that the reason for imposition of suspension, debarment, nullification, modification, or condition has been remedied.

(Source: Amended at 22 Ill. Reg. 20007, effective NOV 9 1998)

Section 950.370 Effect on Current Contracts

Current CDB contracts may be terminated when a contractor is determined to be non-responsible and it is in the public interest to do so, whether or not the non-responsibility has a direct connection with the current contract. Contracts may be terminated with or without further action on the contractor's prequalification ~~responsibility~~.

(Source: Amended at 22 Ill. Reg. 20007, effective NOV 9 1998)

Section 950.390 Settlement

Notwithstanding any provision of this Part, the parties to any contested matter concerning contractor prequalification ~~responsibility~~ may at any time enter into an agreement to resolve prequalification ~~responsibility~~ issues by settlement.

(Source: Amended at 22 Ill. Reg. 20007, effective NOV 9 1998)

SUBPART D: PROCEDURES

Section 950.400 Review

When information which places a contractor's responsibility and prequalification in question comes to CDB's attention, CDB shall review the facts and documentation. If further inquiry is desirable, it may do such further inquiry, which may result in an informal conference with the contractor and its appropriate staff members with CDB.

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

(Source: Amended at 22 Ill. Reg. 20007, effective NOV 9 1998)

Section 950.410 Conference

When requesting a conference with a contractor, CDB's letter shall request that the contractor bring to the conference any documents, personnel, or other information pertinent to responsibility that it wishes for CDB to consider. The contractor may bring its attorney to the conference, if desired. Within a reasonable time in advance of the conference, CDB shall furnish the contractor with all information in its possession pertinent to the responsibility and prequalification issue, and shall further advise the contractor in writing that it has the right to inspect its file.

(Source: Amended at 22 Ill. Reg. 20007, effective NOV 9 1998)

Section 950.420 Executive Director

Following CDB's conference with the contractor, the committee shall forward a recommendation as to a determination of responsibility and prequalification to the Executive Director for consideration. The contractor will be notified in writing of the Executive Director's decision.

(Source: Amended at 22 Ill. Reg. 20007, effective NOV 9 1998)

Section 950.440 Final Consideration

Following the completion by the contractor of procedures in Sections 950.410 and 950.430 of this Part, any contractor whose prequalification ~~bidding--status~~ has been denied, suspended, debarred, nullified, conditioned, modified or limited by CDB may petition the Capital Development Board for a final consideration before the Board of the Executive Director's decision. The petition for final consideration shall be in writing, and shall be submitted within 15 days after the contractor's receipt of the Executive Director's decision on the request for reconsideration. The petition shall state the issues the contractor wishes to bring before the Board, shall contain a brief statement of the contractor's position on each issue, and shall include as attachments all documentary supporting evidence the contractor wishes for the Board to consider. The petition shall be heard at the Board's next regularly scheduled meeting, provided the meeting is at least 20 days from the date CDB receives the contractor's petition. The contractor shall appear at the meeting and present its case in an informal manner to the Board, and may be assisted by an attorney or other persons as desired. The individual Board members may ask questions as appropriate. Minutes of the proceeding shall be taken. The Board will issue its decision within 30 days after the proceedings.

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

(Source: Amended at 22 Ill. Reg. 20007, effective NOV 9 1998)

Section 950.450 Burden of Proof

Any determination pursuant to this Part may be made when CDB possesses documentation of one or more of the factors described in Section 950.180, 950.210, or 950.320. Such documentation constitutes a presumptive determination of non-responsibility. The contractor is entitled to rebut the presumption, through procedures described in this Subpart, but the presumption will not be overturned unless the contractor shows, by a preponderance of evidence, that each factor cited by CDB in support of its determination of non-responsibility is not present. CDB's determinations are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

(Source: Amended at 22 Ill. Reg. 20007, effective NOV 9 1998)

CAPTIAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Hearing Procedures

2) Code Citation: 71 Ill. Adm. Code 100

3) Section Numbers: 100.250 — Adopted Action: Amendment

4) Statutory Authority: Implementing the Capital Development Board Act [20 ILCS 3105] and Article 10 of the Illinois Administrative Procedure Act [5 ILCS 100/Art. 10] and authorized by Section 1A-11 of the Capital Development Board Act [20 ILCS 3105/1A-11].

5) Effective date of Rule: November 9, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this rule contain incorporations by reference? No

8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the ageny's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: July 31, 1998, 22 Ill. Reg. 14018.

10) Has JCAR issued a Statement of Objections to this rule? No

11) Difference(s) between proposal and final version: None

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this amendment replace an emergency rule currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Amendments: Section 100.250 is being amended to clarify the process for any administrative hearings.

16) Information and questions regarding this adopted rule shall be directed to:

Fredrick W. Hahn, Chief Counsel
Capital Development Board
3rd Floor Wm. G. Stratton Bldg.
Springfield, Illinois 62706
Telephone: 217/782-0700

CAPTIAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

The full text of the Adopted Amendments begins on the next page:

CAPTIAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 71: PUBLIC BUILDINGS, FACILITIES AND REAL PROPERTY
CHAPTER I: CAPITAL DEVELOPMENT BOARD
SUBCHAPTER a: RULES

PART 100
HEARING PROCEDURES

Section
100.110 Applicability
100.120 Request for Hearing
100.130 Waiver
100.140 Settlement
100.150 Representation
100.160 Hearing Officer
100.170 Submittal of Documents
100.180 Conference
100.190 Notice of Hearing
100.200 Costs of Hearing
100.210 Disqualification of Officer
100.220 Hearings
100.230 Board Documents
100.240 Powers of the Hearing Officer
100.250 Burden of Proof
100.260 Duties of the Hearing Officer
100.270 Executive Director's Decision
100.280 Petition for Reconsideration
100.290 Final Consideration

AUTHORITY: Implementing the Capital Development Board Act [20 ILCS 3105] and Article 10 of the Illinois Administrative Procedure Act [5 ILCS 100/Art. 10] and authorized by Section 1A-11 of the Capital Development Board Act [20 ILCS 3105/1A-11].

SOURCE: Adopted at 8 Ill. Reg. 20269, effective October 1, 1984; amended at 9 Ill. Reg. 17306, effective October 29, 1985; Part repealed, new Part adopted at 20 Ill. Reg. 15236, effective November 15, 1996; amended at 22 Ill. Reg. 20022, effective NOV 9 1998.

Section 100.250 Burden of Proof

Documents filed by the Board pursuant to Section 100.230 of this Part, at least 15 days prior to hearing, shall constitute prima facie evidence, which may be rebutted by a complainant. The burden shall be upon the complainant to prove by clear and convincing evidence that the Board's action complained of was an abuse of discretion. CDB's determinations are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

CAPTIAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

(Source: Amended at 22 Ill. Reg. 20022, effective NOV 9 1998)

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Prequalification of Architects and Engineers

2) Code Citation: 44 Ill. Adm. Code 980

3) Section Numbers: Adopted Action:

980.120	Amendment
980.200	Amendment
980.300	Amendment
980.310	Amendment
980.540	Amendment

4) Statutory Authority: Implementing the Capital Development Board Act [20 ILCS 3105] and authorized by Section 1A-11 of that Act [20 ILCS 3105/1A-11].

5) Effective date of Rules: November 9, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this rule contain incorporations by reference? No

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: July 31, 1998, 22 Ill. Reg. 14022

10) Has JCAR issued a Statement of Objections to this rule? No

11) Difference(s) between proposal and final version: Inserted Section 980.200 and added the following paragraph in subsection (c): "Unless otherwise specified in writing by CDB, the term of prequalification shall be one year. When prequalification is granted, the A/E will be notified in writing of the expiration date, which will also be entered on CDB's electronic program. CDB may grant a shorter term of prequalification by agreement with the A/E, when a determination is made that a shorter period is justified, or when a special prequalification is developed specifically for a certain project. CDB may, in its discretion, grant a longer period of prequalification when deemed appropriate in light of recent and relevant satisfactory project performance. Updated or new A/E information including the term of prequalification will be entered on CDB's electronic program weekly. The electronic program will be capable of, among other things, sorting A/Es by profile codes to produce lists of A/Es in the various profile codes. At the beginning of each month, a list of A/Es whose prequalification expires in approximately 60 days will be generated."

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this rule replace an emergency rule currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rules: This rulemaking amends certain sections to reflect the requirements of the new Illinois Procurement Code.

16) Information and questions regarding this adopted rule shall be directed to:

Fredrick Hahn, Chief Counsel
Capital Development Board
3rd Floor, Wm. G. Stratton Bldg.
Springfield, Illinois 62706
217/782-0700

The full text of the Adopted Amendments begins on the next page:

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY MANAGEMENT
SUBTITLE B: SUPPLEMENTAL PROCUREMENT
CHAPTER XII: CAPITAL DEVELOPMENT BOARD

PART 980
PREQUALIFICATION OF ARCHITECTS AND ENGINEERS

SUBPART A: RESPONSIBILITY

Section
980.110 Purpose
980.120 Definitions
980.130 Prequalification Required
980.140 Special Projects
980.150 Confidentiality
980.160 Sources for Determining Responsibility
980.170 Department of Professional Regulation Action
980.180 Prequalification of Firms and Office Locations
980.190 Types of Profile Codes
980.200 Processing of Architect-Engineer Prequalification Application
980.210 Ineligibility

SUBPART B: SUSPENSION, DEBARMENT, MODIFICATION OF PREQUALIFICATION, AND CONDITIONAL PREQUALIFICATION

Section
980.300 Actions Affecting Responsibility and Prequalification
980.310 Causes for Suspension, Debarment, Modification of Prequalification, and Conditional Prequalification
980.320 Nullification of Prequalification

SUBPART C: APPLICATION OF CDB ACTION

Section
980.400 General
980.410 Violation of CDB Order
980.420 Denial of Award of Contract
980.430 Debarment
980.440 Reapplication for Prequalification
980.450 Extension of CDB Action
980.460 Effect on Current Contracts
980.470 Basis of Decisions
980.480 Settlement

SUBPART D: PROCEDURES

Section
980.500 Review

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

980.510 Notice of CDB Action
980.520 Executive Director
980.530 Hearings
980.540 Burden of Proof

AUTHORITY: Implementing the Capital Development Board Act [20 ILCS 3105] and authorized by Section 1A-11 of that Act.

SOURCE: Adopted at 2 Ill. Reg. 30, p. 140, effective July 27, 1978; amended at 4 Ill. Reg. 9, p. 233, effective February 14, 1980; amended at 5 Ill. Reg. 1890, effective February 17, 1981; amended and codified at 8 Ill. Reg. 20317, effective October 1, 1984; amended at 9 Ill. Reg. 17329, effective October 29, 1985; amended at 12 Ill. Reg. 20446, effective November 29, 1988; Part repealed, new Part adopted at 22 Ill. Reg. 1154, effective January 1, 1998; amended at 22 Ill. Reg. 20026, effective NOV 9 1998.

SUBPART A: RESPONSIBILITY

Section 980.120 Definitions

The following definitions shall apply to this Part:

"A/E" means an architectural or engineering firm that is in the business of offering the practice or furnishing of architectural or engineering services for building projects, which is registered with the Department of Professional Regulation and licensed to practice architecture, structural engineering or professional engineering in the State of Illinois, or which is properly authorized under the Professional Service Corporation Act and by the Department of Professional Regulation to practice architecture, structural engineering or professional engineering in the State of Illinois. For purposes of this Part, this includes licensed individuals transacting business as sole proprietorships, which are not required to be registered with the Department of Professional Regulation.

"CDB" means the Capital Development Board, the agency.

"Consultant" means a firm or individual who will perform a portion of the contract or assist the A/E in its performance of the contract under a contract with the A/E.

"Contract or Contract Requirements" consist of any and all provisions of the CDB Professional Services Agreement (PSA).

"Office Location" means all locations at which the A/E provides professional services under the license granted by the Department of Professional Regulation and that are under the responsibility of the managing agent for that license.

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

"Parent Office" means the primary location of the A/E's place of business.

"Key Person" means any individual who holds 5% ~~7--1/2%~~ or more ownership interest in the firm. In the event the firm is owned by another corporation, partnership, trust or business association, any individual within that organization who holds a 5% ~~7-1/2%~~ or more ownership interest is considered a "key person". Regardless of ownership interest, any officer, partner, managing agent or director is considered a "key person". This definition also includes any individual who assumes the responsibility of an officer, owner, partner, director, etc., regardless of ownership interest.

"Performance Record" consists of, but is not limited to, the following:

Evidence of material compliance with all CDB contract requirements.

Data indicating the A/E has met all contract requirements on previous contracts, private and public.

"Prequalification" is the status granted by CDB to responsible A/Es that permits them to make submittals on CDB projects or be awarded a CDB contract.

"Responsibility" is a determination made by CDB that the A/E is a responsible A/E. The determination may be made at any time. Because responsibility is affected by such things as financial resources, performance records, and organizational and operational factors, all of which are subject to change, the initial determination of responsibility, made through evaluation of an application to CDB, may be changed upon receipt of additional or different information. The A/E is required to inform CDB of any significant change to the information submitted in its application. Each A/E must provide CDB with adequate documentation of responsibility. CDB will ordinarily provide forms for this information. CDB may supplement this information from other sources and may require additional documentation at any time. A responsibility determination may also be verified on an ongoing basis through other information, including performance evaluations and reference contacts.

"Responsible A/E" is a firm that:

Has adequate financial resources to perform the contract, or the ability to obtain them. This includes, but is not limited to, the ability to obtain required insurance from insurance companies acceptable to CDB.

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

Is able to comply with the contract requirements, considering the firm's other business obligations.

Has a satisfactory performance record.

Has a satisfactory record of integrity and business ethics.

Has the necessary organization, experience, accounting and operational controls, and technical skills.

Is otherwise qualified and eligible to receive a contract award under applicable laws and regulations.

"Types of Profile Codes" means branches of knowledge or expertise of architectural or engineering practice that may be provided by firms and that are listed on CDB's A/E prequalification application.

(Source: Amended at 22 Ill. Reg. 20026, effective ~~NOV 9 1998~~)

Section 980.200 Processing of Architect-Engineer Prequalification Application

a) A/Es must complete a prequalification application.
b) Processing of applications by CDB may require up to 45 days after receipt of all requested information and a completed application.
c) Applications for renewal will ordinarily be sent to the A/Es 60 days before the expiration of current prequalification. A/Es who do not receive an application are responsible for contacting CDB prior to expiration to request an application. Unless otherwise specified in writing by CDB, the term of prequalification shall be one year. When prequalification is granted, the A/E will be notified in writing of the expiration date, which will also be entered on CDB's electronic program. CDB may grant a shorter term of prequalification by agreement with the A/E, when a determination is made that a shorter period is justified. CDB may, in its discretion, grant a longer period of prequalification when deemed appropriate in light of recent and relevant satisfactory project performance. Updated or new A/E information including the term of prequalification will be entered on CDB's electronic program weekly. The electronic program will be capable of, among other things, sorting A/Es by profile code to produce lists of A/Es in various profile codes. At the beginning of each month, a list of A/Es whose prequalification expires in approximately 60 days will be generated.
d) Applications may be sent to CDB by facsimile, provided that the original application is received by CDB within five business days.
e) CDB shall review and evaluate each application received, which may include one or more of the following actions:
   1) Reviewing to determine whether the application is filled out in

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

accordance with the instructions provided;
2) Contacting work references or any other possible sources of pertinent information;
3) Requesting additional information from the applicant;
4) Reviewing CDB A/E performance evaluations; and
5) Meeting with the applicant at the request of CDB or the applicant.

(Source: Amended at 22 Ill. Reg. 20026, effective NOV 9 1998)

SUBPART B: SUSPENSION, DEBARMENT, MODIFICATION OF PREQUALIFICATION, AND CONDITIONAL PREQUALIFICATION

Section 980.300 Actions Affecting Responsibility and Prequalification

At any time, CDB may consider whether an action is warranted concerning an A/E's prequalification. Actions that may be taken include one or more of the following:

a) Interim or Emergency Suspension or Modification
CDB may summarily suspend or modify an A/E's prequalification in accordance with Section 16 of the Capital Development Board Act [20 ILCS 3105/16].

b) Debarment
CDB may debar an A/E to exclude it from making submittals for CDB contracts as authorized by statute. The period of debarment shall be not less than five years and may be permanent when warranted or as authorized by law [20 ILCS 3105/16].

c) Modification of Prequalification
CDB may modify or limit an A/E's prequalification as appropriate, including, but not limited to, one or more of the following:
1) Limiting the size or type of contracts for which an A/E may submit proposals for a specified period of time or until a current contract is substantially complete.
2) Limiting the number of CDB contracts an A/E may enter into for a specified period of time, or until a current contract is substantially complete.
3) Limiting the aggregate dollar amount of contracts the A/E may enter into with CDB.
4) Imposing limits as set forth above pending performance on the A/E's next CDB contract(s) in instances where the A/E has no current CDB contracts.

d) Conditional Prequalification
CDB may condition prequalification (which may be otherwise limited) on the A/E's successful utilization of a management plan, evaluations, conferences, or other methods designed to achieve satisfactory performance or compliance with contract requirements.

e) Suspension

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

CDB may suspend an A/E firm or disqualify an A/E firm temporarily from submitting ~~contracting~~ with CDB, for a period of time up to five years ~~one-year~~. The A/E's failure to timely pursue administrative action as provided by Subpart D of this Part shall constitute consent of the A/E to CDB's action.

(Source: Amended at 22 Ill. Reg. 20026, effective NOV 9 1998)

Section 980.310 Causes for Suspension, Debarment, Modification of Prequalification, and Conditional Prequalification

CDB may determine an A/E is not responsible and suspend, debar or otherwise modify a prequalification or issue a conditional prequalification based upon one or more of the following:

a) Failure to satisfactorily perform work on CDB contract(s), private contract(s), or other governmental contract(s).

b) Breach of the terms of a CDB contract(s), private contract(s), or other governmental contract(s). Breach of a CDB contract includes but is not limited to:
1) Failure to submit required documents and drawings, including record drawings, according to the project schedule, causing a delay in the commencement, completion or close out of a project.
2) Failure to adhere to quality standards of the applicable profession or required codes and standards for a particular type of construction so that the public health and safety are jeopardized by unsafe buildings.
3) Failure to perform supervisory and observer functions as specified in the contract.
4) Failure to notify CDB of problems with any projects, which failure results in time delays or an increase in cost of the project.

c) Making false or misleading statements or failing to disclose or update significant information in connection with CDB procedures or documents, including but not limited to the prequalification application.

d) Violation of civil or criminal Federal or State statutes or administrative rules and regulations. In the case of criminal violations, indictment shall constitute adequate evidence for a determination of non-responsibility.

e) Financial instability which may be evidenced by bankruptcy, failure to timely pay consultants, difficulty in obtaining acceptable insurance, attempts to assign contract proceeds, or other indications of serious business management deficiencies.

f) Failure to understand, accept or utilize CDB procedures and standards, which results in the extraordinary expenditure of CDB resources.

g) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

property, or conduct indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of an A/E.

h) Suspension, debarment, or limits on contracts by any other governmental body.

i) Failure to be properly licensed or registered with the Department of Professional Regulation (DPR), being the subject of disciplinary sanctions by DPR, or the subject of initiation of proceedings by DPR to refuse to renew, suspend or revoke the registration or license of the A/E, or to impose any other disciplinary sanction.

j) Any other cause of so serious or compelling a nature that it affects the present responsibility of an A/E.

(Source: Amended at 22 Ill. Reg. 20026, effective NOV 9 1998)

SUBPART C: APPLICATION OF CDB ACTION

Section 980.430 Debarment

CDB may debar an A/E to exclude it from submitting on CDB projects. CDB will consider debarment in cases so serious and egregious in nature that a permanent loss of submittal privileges may be warranted. In addition to the causes listed in Section 980.310, causes for debarment may include but not be limited to multiple or repetitive criminal convictions or multiple non-responsibility determinations. Following a period of debarment, when an A/E submits a prequalification application to CDB, the application shall be deemed to be a first-time application rather than one for renewal.

(Source: Amended at 22 Ill. Reg. 20026, effective NOV 9 1998)

SUBPART D: PROCEDURES

Section 980.540 Burden of Proof

a) Any determination pursuant to this Part may be made when CDB possesses documentation of one or more of the factors described in Section ~~Sections~~ 980.310, 980.320, or 980.410.

b) Such documentation constitutes a presumptive determination of non-responsibility. The A/E is entitled to rebut the presumption, through procedures described in this Subpart, but the presumption will not be overturned unless the A/E shows, by a preponderance of evidence, that each factor cited by CDB in support of its determination of non-responsibility is not present. CDB's determinations are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

(Source: Amended at 22 Ill. Reg. 20026, effective NOV 9 1998)

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Travel

2) Code Citation: 80 Ill. Adm. Code 2800

3) Section Numbers: Adopted Action:
2800.Appendix A Amend

4) Statutory Authority: Implementing and authorized by Sections 12, 12-1, 12-2, and 12-3 of the State Finance Act [30 ILCS 105/12, 12-1, 12-2 and 12-3] and authorized by the Travel Regulation Council (80 Ill. Adm. Code 3000)

5) Effective Date of Rulemaking: November 6, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this rulemaking contain incorporations by reference? Yes. This rulemaking refers to the Travel Regulation Council (80 Ill. Adm. Code 3000) which has incorporations by reference.

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: July 10, 1998, 22 Ill. Reg. 11665

10) Has JCAR issued a Statement of Objections to these rules? No

11) Difference(s) between proposal and final version: Several minor editing changes have been made.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No changes were necessary.

13) Will this rulemaking replace an emergency rule currently in effect? Yes

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rulemaking: The amendments will increase lodging reimbursement rates for agencies under the jurisdiction of the Governor's Travel Control Board.

16) Information and questions regarding this adopted amendment shall be directed to:

Stephen W. Seiple
720 Stratton Office Building
Springfield, IL 62706
(217) 782-9669

The full text of the Adopted Amendment begins on the next page:

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES
SUBTITLE I: GENERAL TRAVEL CONTROL
CHAPTER I: DEPARTMENT OF CENTRAL MANAGEMENT SERVICES/
GOVERNOR'S TRAVEL CONTROL BOARD

PART 2800
TRAVEL

SUBPART A: GENERAL

Section
2800.100 Definitions
2800.110 Application and Interpretation

SUBPART B: TRAVEL CONTROL SYSTEM

Section
2800.200 Travel Control System
2800.210 Travel Coordinator
2800.220 Travel Authority
2800.230 Government Charge Cards
2800.235 Expenses at Headquarters or Residence
2800.240 Preparation and Submission of Travel Vouchers
2800.250 Approval and Submission of Travel Vouchers
2800.260 Items Directly Billed
2800.270 Conference Registration Fees

SUBPART C: TRANSPORTATION EXPENSES

Section
2800.300 Incidental Expenses for Private and State Owned Automobiles

SUBPART D: LODGING

Section
2800.400 Conference Lodging
2800.410 Employee Owned or Controlled Housing

SUBPART E: PER DIEM MEALS

Section
2800.500 Conference Meals

SUBPART F: MISCELLANEOUS RULES

Section
2800.600 Lack of Receipts
2800.650 Headquarter Designation for Agency Heads

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

SUBPART G: EXCEPTIONS TO THE RULES

Section
2800.700 Special Exceptions-Requested in Advance
2800.710 Ex Post Facto Exceptions

Appendix A Reimbursement Schedule

AUTHORITY: Implementing and authorized by Sections 12, 12-1, 12-2, and 12-3 of the State Finance Act [30 ILCS 105/12, 12-1, 12-2 and 12-3] and authorized by the Travel Regulation Council (80 Ill. Adm. Code 3000).

SOURCE: Amended March 11, 1976; amended at 2 Ill. Reg. 30, p. 215, effective August 1, 1978; new rules adopted at 4 Ill. Reg. 28, p. 155, effective July 1, 1980; old rules repealed at 4 Ill. Reg. 30, p. 1224, July 1, 1980; amended at 5 Ill. Reg. 150, effective January 1, 1981; amended at 6 Ill. Reg. 6682, effective July 1, 1982; amended at 7 Ill. Reg. 9205, effective August 1, 1983; amended at 8 Ill. Reg. 127, 130, effective January 1, 1984; amended at 8 Ill. Reg. 14243, effective August 1, 1984; codified at 8 Ill. Reg. 19350; amended at 10 Ill. Reg. 18014, effective October 6, 1986; Part repealed, new Part adopted at 12 Ill. Reg. 738, effective January 15, 1988; emergency amendment at 15 Ill. Reg. 13196, effective September 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 17981, effective November 27, 1991; amended at 16 Ill. Reg. 4831, effective March 12, 1992; amended at 16 Ill. Reg. 13823, effective September 1, 1992; amended at 19 Ill. Reg. 36, effective January 1, 1995; amended at 19 Ill. Reg. 7858, effective July 1, 1995; amended at 20 Ill. Reg. 7379, effective May 13, 1996; emergency amendment at 22 Ill. Reg. 12082, effective July 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 20036, effective NOV 6 1998.

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

Section 2800.APPENDIX A Reimbursement Schedule

The following rates are effective for Agencies under the jurisdiction of the Board.

Type of Reimbursement	Rate
Mileage	
Auto	See Section 3000.300(f)(2) of the Travel Regulation Council Rules (80 Ill. Adm. Code 3000.300(f)(2))
Plane	$0.40/mile
Per Diem/Meals	
Within the State of Illinois	
Breakfast	$ 5.50
Lunch	$ 5.50
Dinner	$ 17.00
Per Diem -- Quarter	$ 7.00
Per Diem -- Day	$ 28.00
Outside the State of Illinois	
Breakfast	$ 6.50
Lunch	$ 6.50
Dinner	$ 19.00
Per Diem -- Quarter	$ 8.00
Per Diem -- Day	$ 32.00
Lodging	
Chicago Metro	
County of Cook	See Section 3000.400(b) of the Travel Regulation Council Rules (80 Ill. Adm. Code 3000.400(b))
~~Counties of Cook, DuPage, Kane, Lake, McHenry, and Will~~	~~$ 70.00~~
Counties of DuPage, Kane, Lake, McHenry, and Will	$80.00
Downstate Illinois	~~$ 50.00~~
Counties of Champaign, Kankakee, LaSalle, McLean, Macon, Madison, Peoria, St. Clair, Sangamon,	

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF ADOPTED AMENDMENTS

Tazewell, and Winnebago	$60.00
All other Downstate Counties	$50.00
Out-of-State	
Washington, D.C. (also includes the cities of Alexandria, Falls Church, and Fairfax, and the counties of Arlington, Loudoun, and Fairfax in Virginia; and the counties of Montgomery and Prince Georges in Maryland); and New York City (includes the boroughs of the Bronx, Brooklyn, Manhattan, Queens, and Staten Island; Nassau and Suffolk Counties)	$110.00
All other out-of-state locations	$ 90.00
Out-of-Country	Actual Reasonable

(Source: Amended at 22 Ill. Reg. 20036, effective NOV 6 1998)

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

1) Heading of the Part: Electric Reliability

2) Code Citation: 83 Ill. Adm. Code 411

3)

Section Numbers:	Adopted Action:
411.10	New Section
411.20	New Section
411.30	New Section
411.40	New Section
411.50	New Section
411.100	New Section
411.110	New Section
411.120	New Section
411.130	New Section
411.140	New Section
411.150	New Section
411.160	New Section
411.170	New Section
411.180	New Section
411.190	New Section
411.200	New Section
411.210	New Section
411.220	New Section
411.230	New Section
411.TABLE A	New Section

4) Statutory Authority: Implementing Sections 8-401 and 16-125 and authorized by Sections 10-101 and 16-125 of the Public Utilities Act [220 ILCS 5/8-401, 10- 101, and 16-125].

5) Effective Date of Rules: November 7, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Do these rules contain incorporations by reference? No

8) A copy of the adopted rule is on file in the principal office of the Illinois Commerce Commission and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: June 26, 1998, at 22 Ill. Reg. 10945

10) Has JCAR issued a Statement of Objections to these rules? Yes

A) Statement of Objection: November 6, 1998, 22 Ill. Reg. 19664

B) Agency Response: November 13, 1998, 22 Ill. Reg. _____

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

C) Date Agency Response Submitted for Approval to JCAR: November 6, 1998

11) Difference(s) between proposal and final version:

Section 411.20: Add "or outage" after "interruption" in the definition of "Interruption" or "Outage" in the fourth indented paragraph of the definition.

Section 411.20: Add "except as used in Sections 411.210 and 411.220" to the first line of the definition of "Interruption" or "Outage".

Section 411.20: At the end of the definition of "Interruption" or "Outage", add "As used in Sections 411.210 and 411.220, "Interruption" has the same meaning as when used in Section 16-125(e) of the Act."

Section 411.20: In the definition "Power fluctuation" or "Surge", add ", except as used in Sections 411.200, 411.210, and 411.220,".

Section 411.20: In the definition "Power fluctuation" or "Surge", add at the end of the definition "As used in Section 411.200, the term "Power Fluctuation", and as used in Sections 411.210 and 411.220, the term "Power Surge or other Fluctuation", have the same meanings as when those terms are used in Section 16-125(f) of the Act."

Section 411.50: Delete "Within six months after the effective date of this Part" and add "By December 10, 1998".

Section 411.120(b)(3)(F): Add "of each year" after "December 31".

Section 411.120(b)(3)(K): Change "three years after the adoption of this Part" to "June 10, 2001".

Section 411.120(b)(3)(L): Change "three years after the adoption of this Part" to "June 10, 2001".

Section 411.210: Add new subsection (d) as follows: "Notify the Commission, within 72 hours, in the event that more than 30,000 customers are subjected to a power interruption that meets the conditions set forth in Section 16-125(e) of the Act or more than 30,000 customers are subjected to a power surge or other fluctuation that meets the conditions in Section 16-125(f) of the Act."

Section 411.220(a): After the first sentence, add "Any such proceeding shall be commenced by the utility or the Commission no later than 30 days after such power interruption."

Section 411.220(b): After the first sentence add "Any such proceeding

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

shall be commenced by the utility or the Commission no later than 30 days after such power interruption."

Section 411.230(a): In the second sentence, delete "Commission's staff" and substitute "Commission for approval. The Commission shall provide all interested parties, specifically including customers of the utility and units of local government within the service area of the utility, with notice and the opportunity to comment on the utility's proposed administrative procedure. A utility's administrative procedure shall become effective only after approval by the Commission. The Commission shall conclude this approval process within 90 days absent exigent circumstances."

Section 411.230(a)(4): Delete original subsection and replace with the following:

"Provide that, until such time as the Commission finds that a utility is entitled to a waiver of liability under Section 16-125(e) or (f) of the Act and this finding is not appealed or is upheld on appeal, the utility will stay all pending claims subject to the application for waiver and shall maintain in good order all such claims and supporting documentation as well as all claims with supporting documentation that have been denied based upon the utility's belief that it is entitled to a waiver. In addition, upon a determination by the Commission that a utility is not entitled to a waiver of liability under Section 16-125(e) or (f) of the Act, which determination is not appealed or is upheld on appeal, the utility will lift any stay applicable to the request for waiver and notify (at their last known address) customers whose administrative claims were either previously denied or stayed by the utility on the grounds that the utility believed it was entitled to a waiver of liability, and proceed to a determination of the claims on the merits."

Section 411.230(c): Delete original subsection and replace with "Damages under Section 16-125(e) of the Act shall include all actual damages and litigation costs but not consequential damages. Damages under Section 16-125(f) of the Act shall include the replacement value of all goods damaged."

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will these rules replace emergency rules currently in effect? Yes

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rules: These rules implement the requirements of Section 16-125 of the Public Utilities Act. They will provide

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

comprehensive information for the Commission to assess and assure reliability, promote customer choice, and respect sound engineering principles. The new customer reliability targets also will assure that jurisdictional entities (traditional public utilities and alternative retail electric suppliers) focus on individual customers as well as the larger transmission and distribution system when planning for reliability improvements.

These rules provide information and opportunity for the Commission to assess and assure reliability. The system-wide indices reported by the jurisdictional entities under the rules are sufficient to identify system-wide trends in reliability.

16) Information and questions regarding these adopted rules shall be directed to:

Conrad S. Rubinkowski
Office of General Counsel
Illinois Commerce Commission
527 East Capitol Avenue
P.O. Box 19280
Springfield, IL 62794-9280
(217)785-3922

The full text of the Adopted Rules begins on the next page:

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: ELECTRIC UTILITIES

PART 411
ELECTRIC RELIABILITY

SUBPART A: GENERAL

Section
411.10 Purpose
411.20 Definitions
411.30 Applicability of Subpart B
411.40 Applicability of Subpart C
411.50 Commission Design of Customer Survey

SUBPART B: REQUIREMENTS FOR ALL JURISDICTIONAL ENTITIES

Section
411.100 Reliability Obligations
411.110 Record-Keeping Requirements
411.120 Notice and Reporting Requirements
411.130 Interruption Cause Categories
411.140 Reliability Review
411.150 Modification or Exemption
411.160 Format and Disclosure of Reports
411.170 Exclusions
411.180 System Protection
411.190 Approval of Vegetation Management Programs

SUBPART C: UTILITIES WITH 1,000,000 OR MORE CUSTOMERS

Section
411.200 Specific Record-Keeping Requirements
411.210 Specific Notice and Reporting Requirements
411.220 Proceedings to Determine Responsibility Under 220 ILCS 5/16-125(e) & (f)
411.230 Proceedings to Determine Damages Under 220 ILCS 5/16-125(e) & (f)

TABLE A Causes of Interruptions

AUTHORITY: Implementing Sections 8-401 and 16-125 and authorized by Sections 10-101 and 16-125 of the Public Utilities Act [220 ILCS 5/8-401, 10-101, and 16-125].

SOURCE: Emergency rules adopted at 22 Ill. Reg. 11177, effective June 10, 1998, for a maximum of 150 days; adopted at 22 Ill. Reg. 20042,

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

effective NOV 7 1998.

SUBPART A: GENERAL

Section 411.10 Purpose

a) The Commission's policies for reliability of facilities and service have been developed from the following basic principles incorporated in the Public Utilities Act.
   1) Reliability encompasses more than statistical data, and the simple absence or occurrence of outages alone may not reflect the true system reliability. The risks of future outages, as indicated by the age, condition, design, and performance of transmission and distribution facilities and by a jurisdictional entity's investment in the maintenance, repair, replacement, and upgrade of its facilities and equipment, are no less important than the past occurrence of outages in assessing system reliability.
   2) Potential service reliability improvements should be evaluated considering the costs and benefits of the improvements to the jurisdictional entity and to customers.
   3) Reliable electric service is essential to the health, safety and welfare of the citizens of the State of Illinois.

b) Accordingly, this Part is adopted for the purposes stated herein and should be interpreted in a manner consistent with the policies stated herein and in a manner that accomplishes the specific objectives set out in this Part. Ends to be served by this Part are listed below.
   1) To define clearly the Commission's process of assessing electric service reliability.
   2) To assure the reliable delivery of electricity to all customers in this State.
   3) To assure the effective implementation of amendments to the Public Utilities Act relating to the reliable provision of transmission and distribution or delivery services in a competitive environment.
   4) To adopt, as required by law, rules and regulations for assessing, and assuring, the reliability of the transmission and distribution systems and facilities that are under the Commission's jurisdiction.
   5) To establish uniform measurements to assess transmission, distribution and delivery service and to establish reporting requirements that routinely and periodically inform the Commission about the reliability of transmission and distribution systems under its jurisdiction.
   6) To allow the Commission to monitor more effectively the reliability of the transmission and distribution systems over which power and energy from all electric suppliers will be transported to consumers in the State.

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

7) To provide adequate information for the Commission to monitor aspects of reliability in addition to interruptions.

Section 411.20 Definitions

This Section defines terms as they are used in this Part.

"Alternative retail electric supplier" has the same meaning as defined in Section 16-102 of the Public Utilities Act [220 ILCS 5/16-102].

"Controllable interruption" is an interruption caused or exacerbated in scope and duration by the condition of facilities, equipment, or premises owned or operated by a jurisdictional entity, or by the action or inaction of persons under a jurisdictional entity's control and that could have been prevented through the use of generally accepted engineering, construction, or maintenance practices.

"Customer", for the purposes of this Part only, means a retail customer, as that term is defined in Section 16-102 of the Act, or a single entity that is using and has agreed to pay for electric power or energy, or electric transmission or distribution service, from a jurisdictional entity in a wholesale transaction. A single customer can have one or more points of service or meters at a given location. Customer, for the purpose of this Part, shall not include entities that are using electric power or energy unlawfully (e.g., through an illegal tap).

"Distribution circuit" is a circuit owned and/or operated by a jurisdictional entity and designed to operate at a nominal voltage of 15,000 volts or less and to supply one or more distribution transformers.

"Distribution circuit interruption" is an interruption originating at a point that is between the circuit interrupting device at the substation supplying the distribution circuit and the distribution transformer.

"Electric service" means the availability of electric power and energy purchased by the customer at the point of connection between jurisdictional entity equipment and customer equipment, on those terms and conditions provided for in the jurisdictional entity's tariffs, in its terms and conditions of service, or in any contract between a jurisdictional entity and the customer.

"Electric utility" or "Utility" means a public utility, as defined in Section 3-105 and Section 16-102 of the Act, that has a franchise, license, permit or right to furnish or sell electricity to retail customers within a service area.

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

"Facilities" includes all lines, cables, equipment, plant, computer systems, customer service systems, apparatus, property, and any other items of similar kind that are used to provide or that affects the reliability of transmission, distribution or delivery services.

"Independent system operator" shall have the meanings given in Article XVI of the Act [220 ILCS 5/Art. XVI].

"Interruption" or "Outage", except as used in Sections 411.210 and 411.220, means the failure or operation of a single component, or the simultaneous failure or operation of physically and directly connected components of a jurisdictional entity's transmission or distribution system that results in electric service to one or more of its customers being lost or being provided at less than fifty percent of standard voltage for a period longer than one minute in duration and requiring human intervention by the jurisdictional entity to restore electric service.

Service to a multi-phase point of service is interrupted if service to one or more phases is interrupted.

The Commission does not intend this definition to require a jurisdictional entity to install and operate voltage sensing equipment specifically to identify interruptions involving provision of service at less that fifty percent of standard voltage.

This definition specifically excludes occurrences of the loss of electric service when automatic switches, automatic line reclosing devices, or other automatic jurisdictional entity devices successfully restore electric service.

The term "interruption" or "outage" shall not include the interruptions listed below.

Interruptions intentionally initiated by a jurisdictional entity, pursuant to the provisions of an interruptible service tariff or contract and affecting only those customers taking electric service under such tariff or contract.

Interruptions intentionally initiated by a jurisdictional entity for nonpayment of a bill and according to the provisions of Sections 8-201, 8-202, 8-203, 8-204, 8-205 and/or 8-206 of the Act [220 ILCS 5/8-201, 8-202, 8-203, 8-205, and 8-206] and 83 Ill. Adm. Code 280.

Interruptions intentionally initiated by a jurisdictional

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

entity due to tampering with service equipment.

Interruptions intentionally initiated by a jurisdictional entity due to its being denied access to service equipment located on the affected customer's private property.

Interruptions intentionally initiated by a jurisdictional entity due to hazardous conditions located on the affected customer's private property (such as a fire).

Interruptions intentionally initiated by a jurisdictional entity due to a request by the affected customer.

Interruptions intentionally initiated by a jurisdictional entity due to a request by a law enforcement agency, fire department, other governmental agency responsible for public welfare, or any agency or authority responsible for bulk power system security (e.g., North American Electric Reliability Council, a regional reliability council, or an independent system operator).

Interruptions caused by the failure of a customer's equipment; the operation of a customer's equipment in a manner inconsistent with statute, an approved tariff, rule, regulation, or an agreement between the customer and the jurisdictional entity; or the failure of a customer to take a required action that would have avoided the interruption, such as failing to notify the jurisdictional entity of an increase in load when required to do so by a tariff or contract.

Interruptions caused by the actions or omissions of another jurisdictional entity or other supplier of electricity or electrical services shall not be deemed an "interruption" of the jurisdictional entity providing transmission and distribution services so long as that jurisdictional entity's transmission and distribution facilities serving the customer remained operational.

Scheduled interruptions initiated by a jurisdictional entity for repair, maintenance, or reinforcement shall not be considered an interruption for the purposes of the targets set forth in Section 411.140(b)(4) and calculating reliability indices. For all other purposes under this Part, the term "interruption" shall include scheduled interruptions initiated by a jurisdictional entity for repair, maintenance, or reinforcement. Scheduled interruptions are reportable under Section 411.120(b)(3)(C).

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

As used in Sections 411.210 and 411.220, "Interruption" has the same meaning as when used in Section 16-125(e) of the Act.

"Interruption duration" means a period of time measured in one-minute increments that starts when a jurisdictional entity is notified or becomes aware of an interruption and ends when a jurisdictional entity restores electric service.

"Jurisdictional entity" means an electric utility or alternative retail electric supplier owning, controlling, or operating transmission and distribution facilities and equipment subject to the Commission's jurisdiction.

"Operating area" is a geographic area defined by the jurisdictional entity that is a distinct area for administration, operation, or data collection with respect to the facilities serving, or the service provided within, the geographic area.

"Power fluctuation" or "Surge", except as used in Sections 411.200, 411.210, and 411.220, means departure of more than one minute in duration in the frequency or voltage of power supplied to the customer's point of service that is caused by the failure or operation of a single component, or simultaneous failure or operation of directly connected components, of a jurisdictional entity's transmission or distribution system, that exceeds the Commission's standards for frequency and voltage (or, where the customer and the jurisdictional entity have agreed on frequency and voltage standards, exceeds the variation allowed thereby), and that causes damage to customer goods. An interruption shall not be deemed a power fluctuation. A power fluctuation or surge shall not include voltage variations or frequency variations caused by:

Unpreventable damage due to weather events or conditions;

Customer tampering;

Unpreventable damage due to civil or international unrest or animals; and

Damage to a jurisdictional entity's equipment or other actions by a party other than the jurisdictional entity, its employees, agents, or contractors.

As used in Section 411.200, the term "Power Fluctuation", and as used in Sections 411.210 and 411.220, the term "Power Surge or other Fluctuation", have the same meanings as when those terms are used in Section 16-125(f) of the Act.

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

"Reliability indices" are as listed below.

"System Average Interruption Frequency Index (SAIFI)" is the average number of interruptions per customer during the year. It is calculated by dividing the total annual number of customer interruptions by the total number of customers served during the year.

$$SAIFI = \frac{\text{Total Number of Customer Interruptions}}{\text{Total Number of Customers Served}}$$

"Customer Average Interruption Duration Index (CAIDI)" is the average interruption duration for those customers who experience interruptions during the year. It is calculated by dividing the annual sum of all customer interruption durations by the total number of customer interruptions.

$$CAIDI = \frac{\text{Sum of all Customer Interruption Durations}}{\text{Total Number of Customer Interruptions}}$$

"Customer Average Interruption Frequency Index (CAIFI)" is the average number of interruptions for those customers who experience interruptions during the year. It is calculated by dividing the total annual number of customer interruptions by the total number of customers affected by interruptions. In determining the total number of customers affected, each customer is counted only once regardless of the number of customer interruptions that the customer may have experienced during the year.

$$CAIFI = \frac{\text{Total Number of Customer Interruptions}}{\text{Total Number of Customers Affected}}$$

"Unpreventable damage" is damage that could not be reasonably foreseen and prevented through the use of generally accepted engineering, construction, and maintenance practices. For example, damage shall be deemed unpreventable when it is:

Caused by a customer's failure to follow good engineering practices with respect to its own equipment; or

When engineering, construction, operations, or maintenance practices or actions have been identified and proposed by the jurisdictional entity to prevent the interruption, fluctuation, or damage, but the jurisdictional entity has not been allowed or permitted by a governmental authority or property owner to implement such practices or actions.

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

"Worst-performing circuits" are those distribution circuits that, for each reliability index, are among the one percent of all circuits in an operating area (or at least one circuit for each reliability index) with the highest achieved values (lowest performance levels) for the reliability index. For the purpose of identifying worst-performing circuits, only distribution circuit interruptions and customers affected by such interruptions shall be considered in calculating the reliability indices.

Section 411.30 Applicability of Subpart B

The provisions of Subpart B are applicable to all jurisdictional entities subject to this Part.

Section 411.40 Applicability of Subpart C

The provisions of Subpart C are applicable to all electric utilities that have 1,000,000 or more customers.

Section 411.50 Commission Design of Customer Survey

By December 10, 1998, the Commission shall initiate a rulemaking to design and approve a single customer survey that is applicable to each jurisdictional entity's compliance with the requirements of this Part. Until the Commission designs and approves a customer survey, each jurisdictional entity, except for jurisdictional entities exempt under Section 411.110(b), shall comply with the requirements of this Part using a customer survey of its own selection or design. At the conclusion of the Commission initiated proceeding, each jurisdictional entity shall replace, for purposes of the annual reliability reports, its customer survey with the customer survey designed and approved by the Commission.

SUBPART B: REQUIREMENTS FOR ALL JURISDICTIONAL ENTITIES

Section 411.100 Reliability Obligations

a) Each jurisdictional entity shall provide services and facilities that, in accordance with the Act and other applicable statutes, provide an adequate, efficient and reasonable level of reliability giving appropriate consideration to the costs and benefits of changing or maintaining the level of reliability.

b) Each jurisdictional entity shall plan, design, construct, operate and maintain its facilities, including equipment, apparatus, systems, and property, to prevent controllable interruptions of service and to meet the requirements of this Part, consistent with the requirements in subsection (a). If such interruptions occur, the jurisdictional entity shall reestablish service as soon as it can and in a time consistent with general safety and public welfare.

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

c) Each jurisdictional entity shall adopt and implement procedures for restoration of transmission and distribution services to customers after an interruption on a non-discriminatory basis without regard to the identity of the provider of power and energy.

d) Whenever a jurisdictional entity intends to interrupt electric service for the purpose of working on the system, the jurisdictional entity shall make reasonable efforts to notify those customers who may be affected by such interruption in advance of the construction, repair, or maintenance.

e) Each jurisdictional entity shall design its system according to generally accepted engineering practices, including consideration of normally expected weather, animal activity and other conditions.

f) Each jurisdictional entity shall adopt and maintain appropriate operating procedures and reliability related administrative procedures.

Section 411.110 Record-Keeping Requirements

a) Required records. Except as provided in subsection (b) below, a jurisdictional entity shall maintain, for the most recent five-year period, the records listed below.

1) Records sufficient to determine a history of electric service interruptions experienced by each customer at the customer's current location. The records shall be sufficient to determine the information listed below for each interruption.

A) Starting date of the interruption.
B) Starting time of the interruption.
C) Interruption duration.
D) Description of the cause of the interruption.
E) Operating areas affected.
F) Circuit number(s) of the distribution circuit(s) affected.
G) Number of customers affected.
H) Service account number of each customer affected.
I) Address of each affected customer location.
J) Name of each affected customer's electric energy supplier, if known.

2) Records showing, for each distribution circuit, the total number of customers served by the circuit at the end of each year.

b) Periods for which records are not required. A jurisdictional entity need not maintain records reflecting the information identified in subsection (a) for any period prior to calendar year 1994. A jurisdictional entity that, as of January 1, 1994, did not have the technical capability to collect and record some or all of the information identified in subsection (a) need not maintain records reflecting such information for any period prior to January 1, 1999. A jurisdictional entity serving retail customers in Illinois as of December 16, 1997, and that was exempted from the requirements of the Commission's electric service reliability policy (83 Ill. Adm. Code

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

410, Subpart C) as of that date, need not maintain records reflecting such information for any period prior to January 1, 2002.

Section 411.120 Notice and Reporting Requirements

a) Telephone or facsimile notice. A jurisdictional entity must provide notice by telephone or by facsimile transmission to the Consumer Services Division of the Commission when any single event (e.g., storm, tornado, equipment malfunction, etc.) causes interruptions for 10,000 or more of the jurisdictional entity's customers for three hours or more. After such interruptions have continued for three hours, a jurisdictional entity must provide notice within one hour when the notice would be provided during normal business hours, or within the first hour of the next business day. A jurisdictional entity shall provide updates every two hours during the normal business day until service is restored to all customers involved. To the extent that data and information are known, such notice shall include the data and information listed below.

1) An estimate of the number of customers the interruptions affect.
2) Starting date of the interruptions.
3) Starting time of the interruptions.
4) Duration of the interruptions.
5) Locations of the interruptions, described as precisely as possible in generally recognized and geographically oriented terms such as street address, subdivision, or community.
6) Description of the cause of the interruptions.
7) The date and time when the jurisdictional entity expects to restore electric service.
8) The name and telephone number of a jurisdictional entity representative the Commission Staff can contact for more information about the interruptions.
9) Customer call volume to the jurisdictional entity during the interruption as compared to normal call volume and the steps the jurisdictional entity is taking to address call volume.

b) Annual report. On or before June 1 of each year, each jurisdictional entity, except for jurisdictional entities exempt under Section 411.110(b), shall file with the Chief Clerk of the Commission an annual report for the previous calendar year submitted under oath and verified by an individual responsible for the jurisdictional entity's transmission and distribution reliability.

1) The data requirements incorporated in the annual report are not meant to replace timely reports on outages when they occur or are remedied as required by other provisions of this Part.
2) Supporting data used for more than one purpose or calculation need be submitted only once in each annual report, if submitted with clear cross-references. Data should be consistent and differences reconciled to the extent possible.
3) The annual report shall include the information listed below.

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

A) A plan for future investment and, where necessary, reliability improvements for the jurisdictional entity's transmission and distribution facilities that will ensure continued reliable delivery of energy to customers and provide the delivery reliability needed for fair and open competition, along with the estimated cost of implementing the plan and any changes to the plan from the previous annual report.
   i) The plan must cover all operating areas, including a description of the relevant characteristics of each operating area and the age and condition of the jurisdictional entity's equipment and facilities in each operating area.
   ii) The plan shall cover a period of no less than three years following the year in which the report was filed.
   iii) The plan shall identify all foreseeable reliability challenges and describe specific projects for addressing each.
   iv) The plan shall provide a timetable for achievement of the plan's goals.
   v) The plan shall report and address all unresolved reliability complaints about the jurisdictional entity's system received from other utilities, independent system operators, and alternative retail electric suppliers.
   vi) The plan shall report the specific actions, if any, the jurisdictional entity is taking to address the concerns raised in such complaints received from other utilities, independent system operators, and alternative retail electric suppliers.
   vii) The plan must consider all interruption causes listed in Section 411.120(b)(3)(D).
   viii) The plan must consider the effects on customers and the cost of reducing the number of interruptions reported as required by Section 411.120(b)(3)(C).
B) A report of the jurisdictional entity's implementation of its plan filed pursuant to subsection (b)(3)(A) of this Section for the previous annual reporting period, including an identification of significant deviations from the first year of the previous plan and the reasons for the deviations.
C) The number and duration of planned and unplanned interruptions for the annual reporting period and their impacts on customers.
D) The number and causes of controllable interruptions for the annual reporting period.
E) Customer service interruptions that were due solely to the actions or inactions of another utility, another jurisdictional entity, independent system operator, or alternative retail electric supplier for the annual reporting period.

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

F) A comparison of interruption frequency and duration for customers buying electric energy from the jurisdictional entity versus customers buying electric energy from another utility or alternative retail electric supplier for the annual reporting period. A jurisdictional entity may base this comparison on each customer's supplier as of December 31 of each year. A jurisdictional entity need not include this information for customers whose electric energy supplier is not known to the jurisdictional entity.
G) A report of the age, current condition, reliability and performance of the jurisdictional entity's existing transmission and distribution facilities, which shall include, without limitation, the data listed below. In analyzing and reporting the age of the jurisdictional entity's plant and equipment, the jurisdictional entity may utilize book depreciation. Statistical estimation and analysis may be used when actual ages and conditions of facilities are not readily available. The use of such techniques shall be disclosed in the report.
   i) A qualitative characterization of the condition of the jurisdictional entity's system defining the criteria used in making the qualitative assessment, and explaining why they are appropriate.
   ii) A summary of the jurisdictional entity's interruptions and voltage variances reportable under this Part, including the reliability indices for the annual reporting period.
   iii) The jurisdictional entity's expenditures for transmission construction and maintenance for the annual reporting period expressed in constant 1998 dollars, the ratio of those expenditures to the jurisdictional entity's transmission investment, and the average remaining depreciation lives of the entity's transmission facilities, expressed as a percentage of total depreciation lives.
   iv) The jurisdictional entity's expenditures for distribution construction and maintenance for the annual reporting period expressed in constant 1998 dollars, the ratio of those expenditures to the jurisdictional entity's distribution investment, and the average remaining depreciation lives of the entity's distribution facilities, expressed as a percentage of total depreciation lives.
   v) The results of a customer satisfaction survey

completed during the annual reporting period and covering reliability, customer service, and customer understanding of the jurisdictional entity's services and prices.

vi) An overview pertaining to the number and substance of customers' reliability complaints for the annual reporting period and their distribution over the jurisdictional entity's operating areas.

vii) The corresponding information, in the same format, for the previous three annual reporting periods, if available.

H) A table showing the achieved level of each of the three reliability indices of each operating area for the annual reporting period (provided, however, that for any reporting period commencing before April 1, 1998, a jurisdictional entity will not be required to report the CAIFI reliability index).

I) A list showing the worst-performing circuits for each operating area for the annual reporting period with the understanding that the designation of circuits as "worst-performing circuits" shall not, in and of itself, indicate a violation of this Part.

J) A statement of the operating and maintenance history of circuits designated as worst-performing circuits; a description of any action taken or planned to improve the performance of any such circuit (which shall include information concerning the cost of such action); and a schedule for completion of any such action. (The jurisdictional entity may decide, based on cost considerations or other factors, that it should take no action to improve the performance of one or more circuits designated as worst-performing circuits. If the jurisdictional entity decides to take no action to improve the performance of one or more circuits designated as worst-performing circuits, the jurisdictional entity shall explain its decision in its annual report.)

K) Commencing June 10, 2001, tables or graphical representations, covering for the last three years all of the jurisdictional entity's customers, and showing, in ascending order, the total number of customers that experienced a set number of interruptions during the year (i.e., the number of customers, who experienced zero interruptions, the number of customers who experienced one interruption, etc.).

L) Commencing June 10, 2001, for those customers who experienced interruptions in excess of the service reliability targets, a list of every customer, identified by a unique number assigned by the jurisdictional entity and

not the customer's name or account number, the number of interruptions and interruption duration experienced in each of the three preceding years, and the number of consecutive years in which the customer has experienced interruptions in excess of the service reliability targets.

M) The name, address and telephone number of a jurisdictional entity representative who can be contacted for additional information regarding the annual report.

c) Customer report. A jurisdictional entity shall, upon request made by a customer or the Consumer Services Division of the Commission, provide to the customer and/or the Consumer Services Division, within thirty days after the request, a report on all interruptions that the customer making the request, or subject to the Consumer Service Division's request, has experienced at the customer's current service location during the most recent five calendar years. The report shall identify for each interruption the information specified in Section 411.110(a)(1)(A)-(D). Notwithstanding the provisions of this subsection, a jurisdictional entity is not required to report data pursuant to this Section that Section 411.110(b) does not require a jurisdictional entity to maintain, or that the jurisdictional entity was not required to retain at the time of the interruption. This subsection does not alter the provisions of 83 Ill. Adm. Code 200 and 280 that relate to informal and formal complaint procedures.

Section 411.130 Interruption Cause Categories

In adhering to the interruption record-keeping and reporting requirements set forth in this Part, each jurisdictional entity shall classify and report on the cause of each interruption using the cause categories and interruption code descriptions given in Table A of this Part.

Section 411.140 Reliability Review

a) Beginning in the year 1999 and at least every three years thereafter, the Commission shall assess the annual report of each jurisdictional entity and evaluate its reliability performance. Within thirty days after receiving the Commission's final report on such assessment, the jurisdictional entity may prepare a response to such report. Both the Commission's final report and the jurisdictional entity's response shall be filed with the Chief Clerk of the Commission.

1) The Commission recognizes that circumstances and events beyond a jurisdictional entity's control can affect reliability statistics and the interruptions experienced by customers. The Commission shall consider such circumstances and events when evaluating a jurisdictional entity's reliability performance.

2) The Commission evaluation shall:

A) Assess the jurisdictional entity's historical performance relative to established reliability targets.

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

B) Identify trends in the jurisdictional entity's reliability performance.
C) Evaluate the jurisdictional entity's plan to maintain or improve reliability.
D) Include specific identification, assessment, and recommendations pertaining to any potential reliability problems and risks that the Commission has identified as a result of its evaluation.
E) Include a review of the jurisdictional entity's implementation of its plan for the previous reporting period.

b) Annual report assessment and reliability performance evaluation criteria.
1) When assessing a jurisdictional entity's annual report, the Commission shall consider the information listed below.
A) Information that this Part requires a jurisdictional entity to include in annual reports.
B) The relevant characteristics of the area served, including but not limited to system configuration, population density, and geographical constraints.
C) The age and condition of the system's equipment and facilities.
D) Generally accepted engineering practices.
E) The costs of potential actions.
F) The benefits of avoiding the risks of service disruptions.
G) The reliability effects of severe weather events and other events and circumstances that may be beyond the jurisdictional entity's control.
2) Criteria for Commission assessment of a jurisdictional entity's annual report.
A) The report must comply with the requirements of this Part.
B) The report must contain a plan, as required by Section 411.120(b)(3)(A).
3) When assessing a jurisdictional entity's reliability performance, the Commission shall consider the information listed below.
A) Controllable interruptions.
B) Statistical measures of interruptions.
C) The number of interruptions experienced by individual customers.
D) The cumulative hours of interruption experienced by individual customers.
E) The jurisdictional entity's actions to prevent interruptions.
F) The jurisdictional entity's responses to interruptions and to the customers affected by interruptions.
G) The extent to which the jurisdictional entity has restored interruptions of service to customers on a non-discriminatory basis without regard to whether a

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

customer has chosen the jurisdictional entity or another provider of electric power and energy.
H) The number and substance of informal inquiries, requests for assistance, and complaints directed by customers to the jurisdictional entity and to the Commission.
I) The results of customer satisfaction surveys that include customer perceptions of service reliability.
J) Generally accepted engineering practices.
K) The costs of potential actions.
L) The benefits of avoiding the risks of service disruptions.
M) The reliability effects of severe weather events and other events and circumstances that may be beyond the jurisdictional entity's control.
N) Previous Commission reports and the jurisdictional entity's responses to those reports.
O) Information that this Part requires a jurisdictional entity to include in annual reports.
P) The relevant characteristics of the area served, including but not limited to system configuration, population density, and geographical constraints.
Q) The age and condition of the system's equipment and facilities.
4) The jurisdictional entity shall strive to provide electric service to its customers that complies with the targets listed below.
A) Customers whose immediate primary source of service operates at 69,000 volts or above should not have experienced:
i) More than three controllable interruptions in each of the last three consecutive years.
ii) More than nine hours of total interruption duration due to controllable interruptions in each of the last three consecutive years.
B) Customers whose immediate primary source of service operates at more than 15,000 volts, but less than 69,000 volts, should not have experienced:
i) More than four controllable interruptions in each of the last three consecutive years.
ii) More than twelve hours of total interruption duration due to controllable interruptions in each of the last three consecutive years.
C) Customers whose immediate primary source of service operates at 15,000 volts or below should not have experienced:
i) More than six controllable interruptions in each of the last three consecutive years.
ii) More than eighteen hours of total interruption duration due to controllable interruptions in each of the last three consecutive years.
D) Exceeding the service reliability targets is not, in and of

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

itself, an indication of unreliable service, nor does it constitute a violation of the Act or any Commission order, rule, direction, or requirement. The Commission's assessment shall determine if the jurisdictional entity has a process in place to identify, analyze, and correct service reliability for customers who experience a number or duration of interruptions that exceeds the targets.

Section 411.150 Modification or Exemption

a) Any jurisdictional entity may file an application requesting modification of or exemption from any Section of this Part as such Section applies to the jurisdictional entity filing the application. For good cause shown and upon a showing that such a waiver will not compromise the reliability obligations of the jurisdictional entity, the Commission may grant such a request for modification or exemption, except that the Commission may not grant any modification or exemption of specific requirements stated in Section 16-125 of the Act [220 ILCS 5/16-125]. A petition for exemption or modification shall be filed pursuant to 83 Ill. Adm. Code 200 and shall set forth specific reasons and facts in support of the requested exemption or modification.

b) In determining whether good cause has been shown, the Commission shall consider, among other things, the information listed below.
   1) The extent to which circumstances beyond the control of the jurisdictional entity have made compliance with the applicable Section extremely difficult.
   2) Whether the jurisdictional entity has made a good faith effort to comply with the applicable Section in a timely fashion.
   3) Whether other information, which the jurisdictional entity would provide if the waiver is granted, permits the Commission Staff to review the subject filing in a complete, timely and meaningful manner.

Section 411.160 Format and Disclosure of Reports

The reports required to be filed by this Part shall be submitted to the Commission and available to the public in both printed and electronic form. The printed version shall be the official version filed with the Commission's Chief Clerk. Computerized data and information filed as part of a report that is stored by a jurisdictional entity on a personal computer shall be provided in Microsoft Office or Corel Office, IBM personal computer compatible file formats and delivered to the Commission's offices via Internet electronic mail or on floppy disks or other portable storage media as agreed to by the Commission Staff. Underlying data provided to the Commission shall be available to the public to the extent that it is not proprietary information. A jurisdictional entity shall report the required information on both a system-wide and operating areas basis. A jurisdictional entity shall submit the required information in a consistent format each year that facilitates

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

comparisons across time periods and that uses non-technical language. A jurisdictional entity's reports shall be available to the public from the jurisdictional entity and from the Commission. A jurisdictional entity shall keep copies of its reports at its public offices.

Section 411.170 Exclusions

The service reliability targets in this Part shall not apply to customers served under a Commission approved tariff or contract, or contract for competitive services as defined in Section 16-102 of the Act [220 ILCS 5/16-102], that specifies levels of service reliability different from the service reliability targets in this Part.

Section 411.180 System Protection

a) In the event that the equipment or facilities of a customer or other entity are being operated in a manner that is inconsistent with the jurisdictional entity's tariffs, terms and conditions of service, or any contract between the jurisdictional entity and the customer or other entity, and such operation poses, in the reasonable judgment of the jurisdictional entity, an imminent threat to the reliability of service to customers or to person or property, the jurisdictional entity shall have the right, but not the obligation, to immediately discontinue service to those points of service that supply power or energy to such equipment or facilities until such time as the threat can be eliminated and service restored. The jurisdictional entity shall give as much notice of such discontinuance of service as is reasonably possible to the affected customer. Temporary discontinuance of service pursuant to this Section shall be deemed to be in compliance with 83 Ill. Adm. Code 280.130(k).

b) Notwithstanding anything in the rules of the Commission to the contrary, a jurisdictional entity may lawfully take such actions as are required by federal law or standards adopted under federal law, or by an organization authorized by federal authority, to protect the security of the bulk power system and/or to provide for the continuous supply of power to facilities regulated under federal law.

Section 411.190 Approval of Vegetation Management Programs

A jurisdictional entity may file with the Commission tariffs describing programs and practices for the control of vegetation designed to maintain or enhance service reliability. Such tariffs, if passed to file or accepted after hearing, shall be deemed standards of the Commission with respect to vegetation management by such jurisdictional entity and shall pre-empt contrary ordinances, rules, and actions of units of local government. A jurisdictional entity will provide notice to municipalities and counties directly affected thereby of the filing, under this Section, of a proposed tariff or supporting materials relating to the need for such a tariff.

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

SUBPART C: UTILITIES WITH 1,000,000 OR MORE CUSTOMERS

Section 411.200 Specific Record-Keeping Requirements

a) Electric utilities with 1,000,000 or more customers must maintain service records detailing information on each interruption that affects 10 or more customers or power fluctuations that affect 30,000 or more customers. The service record for each interruption shall be maintained for at least five years and shall include the information listed below.
   1) Starting date of the interruption or power fluctuation.
   2) Starting time of the interruption or power fluctuation.
   3) Interruption or power fluctuation duration.
   4) Number of customers affected by the interruption or power fluctuation.
   5) Description of the cause of the interruption or power fluctuation.
   6) Geographic area affected by the interruption or power fluctuation.
   7) Specific equipment involved in the interruption or power fluctuation.
   8) Description of measures taken to restore service or eliminate power fluctuation.
   9) Description of measures taken to remedy the cause of the interruption or power fluctuation.
   10) Description of measures taken to prevent a future interruption or power fluctuation.
   11) Amount of remuneration, if any, paid to affected customers.
   12) Statement of whether the fixed charge was waived for affected customers.

b) An electric utility with 1,000,000 or more customers shall not modify its data collection or record-keeping procedures so as to collect or record less information about the reliability of its transmission and distribution facilities under the jurisdiction of the Commission or to collect information for fewer discrete areas than the utility collected in calendar year 1997 without first seeking the comments of the Commission Staff. Any changes in data collection and record-keeping procedures made without agreement of the Staff shall not excuse a later failure to provide information required or requested under the Act or this Part.

Section 411.210 Specific Notice and Reporting Requirements

Each electric utility having 1,000,000 or more customers shall provide notice and reports as listed below.

a) Make the information, which the utility must maintain in accordance with Section 411.200, available for public inspection at the utility's offices and provide copies of the information to the public upon payment of a fee not exceeding the reasonable cost of reproduction.

b) File, with the Commission's Chief Clerk, an annual report on or before June 1 of each year that includes the information listed below.
   1) Each record that Section 411.200 requires the utility to maintain.
   2) The projected load and peak demand for each of the utility's operating areas for the following three years.
   3) The peak loading (as a percentage of rated normal and emergency capacity) on each transmission and distribution substation transformer operating during its peak loading period at or above 90 percent of normal rated capacity, except where such data would reveal information about loads of specific customers.

c) File, with the Commission's Chief Clerk, a report on or before June 1, 1999 that lists the discrete areas for which it collected reliability data and kept reliability records and that explains its reliability data collection and record-keeping procedures for calendar year 1997.

d) Notify the Commission, within 72 hours, in the event that more than 30,000 customers are subjected to a power interruption that meets the conditions set forth in Section 16-125(e) of the Act or more than 30,000 customers are subjected to a power surge or other fluctuation that meets the conditions in Section 16-125(f) of the Act.

Section 411.220 Proceedings to Determine Responsibility Under 220 ILCS 5/16-125(e) & (f)

a) In the event that more than 30,000 customers of a utility are subjected to a power interruption that meets the conditions set forth in Section 16-125(e) of the Act and the utility or the Commission believes that such interruption is due to one or more of the causes set forth in Section 16-125(e)(1)-(4) of the Act, then the utility may commence a proceeding before the Commission, or the Commission may commence on its own motion a proceeding, seeking a declaration that the subject interruption was due to one or more of such causes and that liability under Section 16-125(e) of the Act should be waived by the Commission. Any such proceeding shall be commenced by the utility or the Commission no later than 30 days after such power interruption. The Commission's decision in such proceeding shall be appealable by any party thereto, and except as reversed or modified on appeal, the determination of the cause of the interruption in this proceeding and the Commission's decision to grant or deny a waiver of liability in connection therewith shall be final and shall be binding on both the utility and claimants in actions before the Commission to recover damages under Section 16-125(e) of the Act. This proceeding shall determine only the liability of the utility under Section 16-125(e) of the Act and shall not constitute a finding or determination, for the purpose of this or any other proceeding, that the utility was or was not negligent, did or did not breach a contract, or violated or did not violate any other legal duty or obligation.

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

b) In the event that more than 30,000 customers of a utility are subjected to a power surge or other fluctuation that meets the conditions set forth in Section 16-125(f) of the Act, and the utility or the Commission believes that such power surge or other fluctuation is due to one or more of the causes set forth in Section 16-125(f)(1)-(4) of the Act, then the utility may commence a proceeding before the Commission, or the Commission may commence on its own motion a proceeding, seeking a determination from the Commission that the subject power surge or other fluctuation was due to one or more of such causes and that, therefore, no liability attaches under Section 16-125(f) of the Act. Any such proceeding shall be commenced by the utility or the Commission no later than 30 days after such power surge or other fluctuation. The Commission's decision in such proceeding shall be appealable by any party thereto, and except as reversed or modified on appeal, the determination of the cause of the power surge or other fluctuation in this proceeding shall be final and binding on both the utility and claimants in actions before the Commission to recover damages under Section 16-125(f) of the Act. This proceeding shall determine only the liability of the utility under Section 16-125(f) of the Act and shall not constitute a finding or determination, for the purpose of this or any other proceeding, that the utility was or was not negligent, did or did not breach a contract, or violated or did not violate any other legal duty or obligation.

c) Any customer affected by the subject interruption, power surge or other fluctuation, or a unit of local government in which such interruption, power surge or other fluctuation occurred, shall be entitled to intervene in a proceeding brought pursuant to this Section. Informal and formal complaints pursuant to the Commission's Rules of Practice (83 Ill. Adm. Code 200) brought by affected customers and units of local government shall be stayed pending disposition of this proceeding and appeals thereof, or consolidated with this proceeding for the purposes of liability.

Section 411.230 Proceedings to Determine Damages Under 220 ILCS 5/16-125(e) & (f)

a) Utilities shall design and implement an administrative procedure for resolving and paying claims for actual damages and replacement value under Section 16-125(e) and (f) of the Act that will minimize the need for formal complaint proceedings before the Commission. Utilities shall submit a description of this administrative procedure to the Commission for approval. The Commission shall provide all interested parties, specifically including customers of the utility and units of local government within the service area of the utility, with notice and the opportunity to comment on the utility's proposed administrative procedure. A utility's administrative procedure shall become effective only after approval by the Commission. The Commission

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

shall conclude this approval process within 90 days absent exigent circumstances. The process shall:

1) Preserve, at the option of an affected customer, the availability of the Commission's informal and formal complaint procedures in the event that the customer chooses not to accept the administrative resolution;

2) Define clearly and in plain language reasonable standards for verification of damages and the procedures that will be followed by the utility and shall notify the claimant of the right to seek a determination by the Commission of actual damages or replacement value payable by the jurisdictional entity in the event that the claimant chooses not to accept the administrative resolution offered by the utility;

3) Be designed to resolve claims that are not stayed pursuant to Section 411.220 of this Part within ninety days after the claimant making a written claim and providing the required proof of damage in accordance with the administrative procedure developed pursuant to this Section, and the utility shall devote sufficient resources to the claims process such that a typical claim is resolved within that period. In the event that a claimant furnishes insufficient information to make a determination, the utility shall promptly notify the claimant of that fact; and

4) Provide that, until such time as the Commission finds that a utility is entitled to a waiver of liability under Section 16-125(e) or (f) of the Act and this finding is not appealed or is upheld on appeal, stay all pending claims subject to the application for waiver and shall maintain in good order all such claims and supporting documentation as well as all claims with supporting documentation that have been denied based upon the utility's belief that it is entitled to a waiver. In addition, upon a determination by the Commission that a utiity is not entitled to a waiver of liability under Section 16-125(e) or (f) of the Act, which determination is not appealed or is upheld on appeal, the utility will lift any stay applicable to the request for waiver and notify (at their last known address) customers whose administrative claims were either previously denied or stayed by the utility on the grounds that the utility believed it was entitled to a waiver of liability, and proceed to a determination of the claims on the merits.

b) The determination of the utility's administrative complaint resolution process shall not constitute evidence in the Commission or any court of the liability or absence of liability of the utility, or of the amount of damage, if any, suffered by the customer.

c) Damages under Section 16-125(e) of the Act shall include all actual damages and litigation costs but not consequential damages. Damages under Section 16-125(f) of the Act shall include the replacement value of all goods damaged.

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

d) A customer or a unit of local government whose claim for relief under Section 16-125(e) or (f) of the Act is not resolved through the administrative procedures described in this Section may then seek relief from the jurisdictional entity pursuant to the Commission's established complaint procedures (83 Ill. Adm. Code 280.170).

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

Section 411.TABLE A Causes of Interruptions

Interruption Cause Categories	Interruption Code Description
Other Alternative Retail Electric Supplier or Other Utility	Loss of Supply Operating Event
Jurisdictional Entity/Contractor Personnel-Errors	Unclassified Error Switching Error Accident by Jurisdictional Entity Testing Error Dig-In by Jurisdictional Entity Accident by Jurisdictional Entity Contractor Dig-In by Jurisdictional Entity Contractor
Customer	Overload Customer Request Customer Equipment Non-payment of Bill Tampering with Service Access to Equipment Denied Interruptible Service Tariff or Contract
Public	Foreign Object Fire Vandalism Accident by Others Dig-In by Others Vehicles
Weather Related	Lightning Wind Ice Extreme Cold Extreme Heat Flooding
Animal Related	Wildlife Birds Snakes Squirrels Other
Tree Related	Tree Contact

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

	Primary
	Secondary
	Service Drop
	Limb Broken
	Primary
	Secondary
	Service Drop
Overhead Equipment Related	Contamination
	Malfunction
	Broken Fuse Link
Underground Equipment Related	Underground Failure
	Contamination
	Malfunction
Intentional	Scheduled Construction, Maintenance, or Repair
	Emergency Repairs
	Protection of System Integrity
Transmission and Substation Equipment Related	Contamination
	Transmission System Outage
	Substation Equipment
Unknown	Unknown*
Other	Other

* This category shall not be used if a reasonable and customary investigation should be expected to determine the proper cause of the interruption for which one of the other categories would be more appropriate.

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

1) Heading of the Part: Non-Discrimination in Affiliate Transactions for Electric Utilities

2) Code Citation: 83 Ill. Adm. Code 450

3)

Section Numbers:	Adopted Action:
450.10	New Section
450.20	New Section
450.25	New Section
450.30	New Section
450.40	New Section
450.50	New Section
450.60	New Section
450.70	New Section
450.80	New Section
450.85	New Section
450.90	New Section
450.100	New Section
450.110	New Section
450.120	New Section
450.130	New Section
450.140	New Section
450.150	New Section
450.160	New Section

4) Statutory Authority: Implementing and authorized by Section 16-121 of the Public Utilities Act [220 ILCS 5/16-121].

5) Effective Date of Rules: November 7, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Do these rules contain incorporations by reference? No

8) A copy of the adopted rule is on file in the principal office of the Illinois Commerce Commission and is available for public inspection.

9) Notice of Proposal Published in Illinois Register:

June 26, 1998, at 22 Ill. Reg. 10947

10) Has JCAR issued a Statement of Objections to these rules? Yes

A) Statement of Objection: November 6, 1998, 22 Ill. Reg. 19665

B) Agency Response: November 13, 1998, 22 Ill. Reg.

C) Date Agency Response Submitted for Approval to JCAR: November 6, 1998

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

11) Difference(s) between proposal and final version:

Section 450.10: Add "that provide services to customers within the service territory of the utility with which it is affiliated" to first sentence of definition of "Affiliated interests in competition with alternative retail electric suppliers".

Section 450.10: Add "to customers within the service territory of the utility with which it is affiliated" after "electricity" in both locations in the first sentence of definition of "Affiliated interests in competition with alternative retail electric suppliers".

Section 450.10: Add definition of "Competitive services".

Section 450.10: Delete original definition of "Corporate support" and replace it with the following:

> "Corporate support" means corporate oversight and governance involving administrative services (including travel administration, security, printing, graphics, custodial services, secretarial support, mail services, and records management), financial management services (including accounting, treasury, internal audit, tax, and financial reporting and planning), data processing, shareholder services, human resources, employee benefits, regulatory affairs, legal services, lobbying, and non-marketing research and development activities. Corporate support also includes strategic planning

Section 450.20(f): Delete ". If an electric utility offers affiliated interests or customers of affiliated interests services that are not governed by tariff sheets, except for corporate support transactions and services that have been declared competitive pursuant to Section 16-113 of the Act, it shall contemporaneously offer such services to all unaffiliated entities and customers of unaffiliated entities." and replace with ", provided, however, that this subsection shall not apply to billing experiments under Section 16-106 of the Act or competitive services under Sections 16-102 and 16-116(b) of the Act."

Section 450.20: Add subsections (g) and (h).

Section 450.25: New Section added.

Section 450.40: Delete original language and replace with the following:

> Electric utilities shall not tie, as defined by State and federal anti-trust laws, the provision of any delivery services to the taking of any goods and services from the electric utilities' affiliated interests in competition with alternative retail electric suppliers.

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will these rules replace emergency rules currently in effect? Yes

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rules?

These rules will help the development of a competitive marketplace for electricity supply by preventing utilities from using unfair and anti-competitive practices to artificially support their own affiliates. In this regard, the rules address the provision of non-tariffed services, tying arrangements, release of capacity, information sharing, independent functioning, advertising, and maintenance of books and records. In addition, the rules reaffirm that utility-provided tariffed services shall be provided on a non-discriminatory basis, and, in so doing, the rules specifically prohibit certain discriminatory behavior and require a log for recording instances where utilities exercise discretion in implementing their tariffs.

16) Information and questions regarding these adopted rules shall be directed to:

Conrad S. Rubinkowski
Office of General Counsel
Illinois Commerce Commission
527 East Capitol Avenue
P.O. Box 19280
Springfield, IL 62794-9280
(217)785-3922

The full text of the Adopted Rules begins on the next page:

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: ELECTRIC UTILITIES

PART 450
NON-DISCRIMINATION IN AFFILIATE TRANSACTIONS FOR ELECTRIC UTILITIES

Section
450.10 Definitions
450.20 Non-Discrimination
450.25 Marketing and Advertising
450.30 Non-Discrimination Concerning Services Provided Pursuant to Section 16-118 of the Public Utilities Act
450.40 Tying
450.50 Release, Assignment, Transfer, and Brokering of Capacity
450.60 Nondiscriminatory Provision of Information to Unaffiliated Entities
450.70 Customer Information
450.80 Exception for Corporate Support Information
450.85 Affiliate Information Sharing
450.90 Confidentiality of Alternative Retail Electric Supplier (ARES) Information
450.100 Independent Functioning
450.110 Employees
450.120 Transfer of Goods and Services
450.130 List of Affiliated Interests and ARES
450.140 Maintenance of Books and Records and Commission Access
450.150 Internal Audits
450.160 Complaint Procedures

AUTHORITY: Implementing and authorized by Section 16-121 of the Public Utilities Act [220 ILCS 5/16-121].

SOURCE: Emergency rules adopted at 22 Ill. Reg. 11204, effective June 14, 1998, for a maximum of 150 days; adopted at 22 Ill. Reg. 20071, effective NOV 7 1998.

Section 450.10 Definitions

"Act" means the Public Utilities Act [220 ILCS 5].

"Affiliated interest" has the same meaning as in Section 7-101(2) of the Act.

"Affiliated interests in competition with alternative retail electric suppliers" shall include affiliated alternative retail electric suppliers that provide services to customers within the service territory of the utility with which it is affiliated, as well as affiliated interests that broker, sell, or market electricity to customers within the service territory of the utility with which it is affiliated, or that provide consulting services directly related to the sale of electricity to the customers within the service territory of the utility with which it is affiliated.

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

"Alternative retail electric supplier" or "ARES" has the same meaning as in Section 16-102 of the Act.

"Competitive services" has the same meaning as in Section 16-102 of the Act.

"Corporate support" means corporate oversight and governance involving administrative services (including travel administration, security, printing, graphics, custodial services, secretarial support, mail services, and records management), financial management services (including accounting, treasury, internal audit, tax, and financial reporting and planning), data processing, shareholder services, human resources, employee benefits, regulatory affairs, legal services, lobbying, and non-marketing research and development activities. Corporate support also includes strategic planning.

"Delivery services" has the same meaning as in Section 16-102 of the Act.

"Electric utility" has the same meaning as in Section 16-102 of the Act.

"Emergency support" means the temporary provision of personnel and other resources when consumer safety is at risk or to help maintain service during emergencies where interruption of service can only be avoided or reduced through the sharing of employees.

"Unaffiliated entity" means any entity other than either the electric utility or any of the electric utility's affiliated interests.

Section 450.20 Non-Discrimination

a) Electric utilities shall not provide affiliated interests or customers of affiliated interests preferential treatment or advantages relative to unaffiliated entities or their customers in connection with services provided under tariffs on file with the Illinois Commerce Commission (Commission). This provision applies broadly to all aspects of service, including, but not limited to, responsiveness to requests for service, the availability of firm versus interruptible services, the imposition of special metering requirements, and all terms and conditions and charges specified in the tariff.

b) Except for corporate support transactions and services that have been declared competitive pursuant to Section 16-113 of the Act, transactions between an electric utility and one or more of its affiliated interests in competition with alternative retail electric suppliers that are not governed by tariff sheets on file with the Commission shall not discriminate in relation to unaffiliated alternative retail electric suppliers.

c) Electric utilities and affiliated interests shall not notify potential or actual customers, either directly or indirectly, advertise to the public, or otherwise communicate that the electric utility provides any advantages relating to the scheduling, transmission or distribution of electricity to affiliated interests or their customers relative to unaffiliated entities and their customers.

d) A utility shall process requests for similar services provided by the utility in the same manner and within the same time period for its affiliated interests in competition with alternative retail electric suppliers and for all similarly situated unaffiliated alternative retail electric suppliers and their respective customers.

e) If discretion is permitted in application of a tariff provision, electric utilities shall maintain a log detailing each instance in which it exercised discretion, as required in Section 450.140(d).

f) If an electric utility offers affiliated interests or customers of affiliated interests a discount, rebate, fee waiver or waivers of its ordinary terms and conditions for services provided under tariffs on file with the Commission, it shall contemporaneously offer the same discount, rebate, fee waiver or waivers of its ordinary terms and conditions to all unaffiliated entities and customers of unaffiliated entities, to the extent consistent with the tariffs, provided, however, that this subsection shall not apply to billing experiments under Section 16-106 of the Act or competitive services under Sections 16-102 and 16-116(b) of the Act. Electric utilities shall maintain a log of such instances, as required in Section 450.140(d).

g) A cusomter's eligibility for participation in any billing experiments under Section 16-106 of the Act or contracts for competitive service under Sections 16-102 and 16-116(b) of the Act, except for those competitive services that have been declared competitive pursuant to Section 16-113 of the Act, shall not be conditioned on, nor tied to, the taking of any goods and services from the utility's affiliated interests. Electric utilities shall inform customers of this prohibition in writing before customers begin taking such service.

h) When providing delivery services as a component of any bundled service, an electric utility shall not offer affiliated interests or the customers of affiliated interests a discount, rebate, fee waiver or waivers of its ordinary terms and conditions for delivery services on file with the Commission unless delivery services have been declared competitive service pursuant to Section 16-113 of the Act or the electric utility contemporaneously offers the same discount, rebate, fee waiver or waivers of its ordinary terms and conditions to

all unaffiliated entities and customers of unaffiliated entities.

Section 450.25 Marketing and Advertising

a) An electric utility shall neither jointly advertise nor jointly market its services or products with those of an affiliated interest in competition with ARES.

b) Nothing in subsection (a) shall be construed as prohibiting an affiliated interest in competition with ARES from using the corporate name or logo of an electric utility or electric utility holding company.

Section 450.30 Non-Discrimination Concerning Services Provided Pursuant to Section 16-118 of the Public Utilities Act

In providing any service or engaging in any activity pursuant to Section 16-118 of the Act, whether such service or activity is governed by tariffs filed with the Commission or by other agreements, electric utilities shall not discriminate in favor of or provide preferential treatment to their affiliated interests. Offers to provide service pursuant to Section 16-118 of the Act, whether through tariffs or agreements, shall be made concurrently to all similarly situated alternative retail electric suppliers or electric utilities other than the electric utility in whose service area retail customers are located.

Section 450.40 Tying

Electric utilities shall not tie, as defined by State and federal anti-trust laws, the provision of any delivery services to the taking of any goods and services from the electric utilities' affiliated interests in competition with alternative retail electric suppliers.

Section 450.50 Release, Assignment, Transfer, and Brokering of Capacity

Except to the extent as reserved to the sole and exclusive jurisdiction of the Federal Energy Regulatory Commission (FERC), electric utilities shall not grant preferences regarding the release, assignment, transfer, or brokering of electric transmission system capacity to affiliated interests or their customers.

Section 450.60 Nondiscriminatory Provision of Information to Unaffiliated Entities

a) Any ARES may submit, to an electric utility, a written standing request for information related to the electric utility's transmission or distribution systems that is provided by the utility to the electric utility's affiliated interests. Standing requests made pursuant to this Section shall expire one year after being received by

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

the utility unless renewed in writing by the ARES.

b) Employees of the electric utility's affiliated interests shall not have preferential access to any information about the electric utility's transmission or distribution systems that is not contemporaneously and in the same form and manner available to an unaffiliated alternative retail electric supplier that has submitted a request pursuant to subsection (a) of this Section.

Section 450.70 Customer Information

a) Customer information shall be made available in accordance with Section 16-122 of the Public Utilities Act [220 ILCS 5/16-122], without preference to affiliated interests or their customers. Electric utilities shall not provide any preferences to affiliated interests in requesting authorization for the release of customer information.

b) An unaffiliated ARES may submit, to an electric utility, a written standing request for any generic customer information concerning the usage, load shape curve or other general characteristics of customers by rate classification that the electric utility provides to its affiliated interests in competition with ARES. A standing request made pursuant to this Section shall expire one year after being received by the utility unless renewed in writing by the ARES.

c) The electric utility shall contemporaneously, and in the same form and manner, make available to any unaffiliated alternative retail electric suppliers that have submitted a standing request, pursuant to subsection (b) of this Section, any generic customer information concerning the usage, load shape curve or other general characteristics of customers by rate classification that the utility makes available to its affiliated interests in competition with alternative retail electric suppliers.

d) Any unaffiliated ARES that receives generic customer information pursuant to a standing request made under this Section or any affiliated interest in competition with ARES that receives generic customer information concerning the usage, load shape curve or other general characteristics of customers by rate classification from the electric utility shall, in accordance with Section 16-122(b) of the Act, pay the electric utility a reasonable fee in each instance that such information is provided.

Section 450.80 Exception for Corporate Support Information

Except as proscribed by Sections 450.60 and 450.70, electric utilities may share information concerning corporate support with affiliated interests without being required to share such information with unaffiliated entities.

Section 450.85 Affiliate Information Sharing

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

The affiliated interests of an electric utility shall neither directly nor indirectly provide preferential access to information to any of the utility's affiliated interests in competition with ARES where the utility's direct sharing of such information with an affiliated interest in competition with ARES would violate any Section of the Public Utilities Act or any Section of this Part.

Section 450.90 Confidentiality of Alternative Retail Electric Supplier (ARES) Information

Electric utilities shall treat all information obtained from an ARES as confidential information, and shall not provide such information to its affiliated interests or to unaffiliated entities unless the alternative retail electric supplier provides authorization to do so.

Section 450.100 Independent Functioning

Except in relation to corporate support and emergency support, electric utilities and affiliated interests in competition with ARES that provide services to customers within the utility's service territory shall function independently of each other and shall not share services or facilities.

Section 450.110 Employees

a) Except in relation to corporate support and emergency support, electric utilities and their affiliated interests in competition with alternative retail electric suppliers shall not jointly employ or otherwise share the same employees.

b) Electric utilities shall not jointly employ or otherwise share employees engaged in providing delivery services with their affiliated interests in competition with alternative retail electric suppliers.

c) Subsections (a), (b) and (d) of this Section shall not apply to any employee covered by a collective bargaining agreement subject to federal labor law, including the Labor Management Relations Act and the National Labor Relations Act.

d) Each electric utility that has an affiliated interest in competition with ARES shall maintain a log detailing the transfer of employees: from the utility to its affiliated interests in competition with ARES; from the utility to its other affiliated interests; and from the utility's other affiliated interests to its affiliated interests in competition with ARES. This subsection shall not apply to employee transfers to or from corporations that are affiliated interests of the electric utility solely because they share a common director. The log shall be made available to the Commission upon request.

Section 450.120 Transfer of Goods and Services

a) Transactions between an electric utility and its affiliated interests

shall not be allowed to subsidize the affiliated interests.

b) In connection with an application for a certificate of service authority filed by an affiliated interest of an electric utility, pursuant to Section 16-115 of the Act, the affiliated interest shall provide a copy of a Commission approved services and facilities or affiliated interest agreement that explicitly addresses the cost allocation and valuation methodology to be applied to any transfer of goods and services: between the electric utility and its affiliated interests in competition with ARES; between the utility and its other affiliated interests; and between the utility's other affiliated interests and its affiliated interests in competition with ARES. In the event that there is no Commission approved agreement addressing these issues, the applicant shall submit such an agreement for approval as part of its application.

c) Costs associated with the transfer of goods and services between an electric utility and its affiliated interests, including affiliated interests in competition with ARES, shall be priced as specified in, and allocated pursuant to, the Commission approved services and facilities agreement or affiliated interests agreement presented in the affiliated ARES certification proceeding. Any transfer of goods and services between an electric utility and its affiliated interests, including affiliated interests in competition with ARES, that is not explicitly addressed in a Commission approved services and facilities or affiliated interests agreement is prohibited unless the transfer has been otherwise specifically approved by the Commission pursuant to Section 7-101 of the Act or approval has been waived by statute or Commission rule.

Section 450.130 Lists of Affiliated Interests and ARES

a) Each electric utility shall maintain an accurate list of all its affiliated interests. Such list shall include the name and address of each affiliated interest and the name and business telephone number of at least one officer of each affiliated interest. The electric utility shall make this list available to the public upon request.

b) The electric utility shall file this list and any subsequent changes to the list with the Chief Clerk of the Commission. The electric utility shall also send copies of the list and subsequent changes to the Director of the Accounting Department and the Manager of the Consumer Services Division of the Commission. The Chief Clerk of the Commission shall make the most recent list of each electric utility available to the public upon request.

c) All ARES, including any utility affiliated ARES, shall, upon certification, but prior to commencing marketing operations, provide to each electric utility in each area of the ARES' certification, notice of the ARES' certification, its trade name, local address and address for service of process, local telephone number and telephone number of its parent company, local fax number and fax number of its

parent company and Internet address, if any, of it and its parent company.

d) The electric utility shall receive and compile all information submitted under subsection (c) above and shall make this information available to the public upon request.

Section 450.140 Maintenance of Books and Records and Commission Access

a) An electric utility shall maintain books, accounts, and records separate from those of its affiliated interests.

b) In connection with an application for a certificate of service authority filed by an affiliated interest of an electric utility, pursuant to Section 16-115 of the Act, the affiliated interest shall provide a copy of a Commission approved services and facilities or affiliated interest agreement that explicitly sets forth both the cost allocation guidelines and the accounting conventions to be applied to any transactions: between the electric utility and its affiliated interests in competition with ARES; between the utility and its other affiliated interests; and between the utility's affiliated interests in competition with ARES and its other affiliated interests. In the event that there is no Commission approved agreement addressing cost allocation and accounting conventions, the applicant shall submit such an agreement for approval as part of its application.

c) Upon the request of the Commission, electric utilities shall make personnel available who are competent to respond to the Commission's inquiries regarding the nature of any transactions that have taken place between the electric utility and its affiliated interests, including but not limited to the goods and services provided, the prices, terms and conditions, and other considerations given for the goods and services provided.

d) Each electric utility shall maintain a log detailing: each instance in which it exercised discretion in the application of tariff provisions; each instance in which it offered affiliated interests or customers of affiliated interests services not governed by tariffs, except for corporate support transactions and services that have been declared competitive pursuant to Section 16-113 of the Act; and each instance in which it offered affiliated interests or customers of affiliated interests a discount, rebate, fee waiver or waivers of the electric utility's ordinary terms and conditions in connection with services provided under tariffs on file with the Commission. The electric utility shall make such log available to the Commission upon request. The log shall contain the following information:

1) the names of the affiliated interests and unaffiliated entities involved in the transaction;
2) a description of the transaction;
3) the time period over which the transaction applies; and
4) the quantities and locations involved in the transaction.

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED RULES

Section 450.150 Internal Audits

a) Electric utilities shall conduct biennial internal audits on transactions with affiliated interests. These audits shall test compliance with this Part, with any applicable Commission orders, with the electric utility's affiliated interest operating agreement(s) and/or guidelines, with 83 Ill. Adm. Code 415, and with 83 Ill. Adm. Code 420. The audits shall include written reports of conclusions and associated workpapers that shall be available to the Commission Staff for review. The audit reports shall be submitted to the Commission's Director of Accounting within 30 days after completion. Any audit performed pursuant to this Section may be designated as confidential with the Commission's Director of Accounting.

b) The first such internal audit report shall be submitted on or before December 1, 1998. Succeeding audit reports shall be submitted on or before December 1 of each even numbered succeeding year.

c) Subsections (a) and (b) of this Section shall not apply to transactions with corporations that are affiliated interests of the electric utility solely because they share a common director or transactions with individuals that are affiliated interests of the electric utility solely because they are an elective officer or director of the electric utility.

Section 450.160 Complaint Procedures

a) Complaints alleging violations of this Part shall be filed pursuant to 83 Ill. Adm. Code 200.

b) Pursuant to Section 16-121 of the Act, after notice and hearing held on complaint or on the Commission's own motion, the Commission may:

1) Order the affiliated alternative retail electric supplier to cease and desist, or correct, any violation of or non-conformance with the provisions of 83 Ill. Adm. Code 450;

2) Impose financial penalties for violations of or non-conformance with the provisions of 83 Ill. Adm. Code 450, not to exceed $10,000 per occurrence or $30,000 per day for those violations or the non-conformance that continue after the Commission issues a cease-and-desist order; and

3) Alter, modify or suspend the certificate of service authority of an electric utility's affiliated alternative retail electric supplier for substantial or repeated violations of or non-conformance with the provisions of 83 Ill. Adm. Code 450.

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED AMENDMENT

1) Heading of the Part: Reports of Accidents or Incidents by Persons Engaged in the Transportation of Gas, or Who Own or Operate Gas Pipeline Facilities

2) Code Citation: 83 Ill. Adm. Code 595

3) Section Numbers: 595.110 — Adopted Action: Amendment

4) Statutory Authority: Implementing and authorized by Section 6 of the Illinois Gas Pipeline Safety Act [220 ILCS 20/6].

5) Effective Date of Amendment: November 7, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this amendment contain incorporations by reference? No

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the principal office of the Illinois Commerce Commission and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: July 6, 1998 at 22 Ill. Reg. 11262

10) Has JCAR issued a Statement of Objections to this amendment? No

11) Difference(s) between proposal and final version: None

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? No changes required

13) Will this amendment replace an emergency amendment currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of amendment: Part 595 requires that persons operating a pipeline subject to the rules file a report with the Commission under certain circumstances, one of which is property damage exceeding $5,000. The amount was raised from $1,000 to $5,000 in 1986. The Federal reporting amount is damage in excess of $50,000. The amendment brings the Illinois amount more in line with present day costs and operational expenses.

16) Information and questions regarding this adopted amendment shall be directed to:

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED AMENDMENT

Conrad S. Rubinkowski
Office of General Counsel
Illinois Commerce Commission
527 East Capitol Avenue
P.O. Box 19280
Springfield, IL 62794-9280
(217)785-3922

The full text of the Adopted Amendment begins on the next page:

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED AMENDMENT

TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER d: GAS UTILITIES

PART 595
REPORTS OF ACCIDENTS OR INCIDENTS BY PERSONS ENGAGED IN THE TRANSPORTATION OF GAS, OR WHO OWN OR OPERATE GAS PIPELINE FACILITIES

SUBPART A: GENERAL PROVISIONS

Section
595.10 Exemption from 83 Ill. Adm. Code 220

SUBPART B: REPORTS OF ACCIDENTS OR INCIDENTS

Section
595.110 Definitions
595.120 Reporting of Accidents or Incidents
595.130 Immediate Reports

AUTHORITY: Implementing and authorized by Section 6 of the Illinois Gas Pipeline Safety Act [220 ILCS 20/6].

SOURCE: Filed July 16, 1970; codified at 8 Ill. Reg. 7616; amended at 10 Ill. Reg. 8970, effective June 1, 1986; recodified from 92 Ill. Adm. Code 1810 at 12 Ill. Reg. 12998; amended at 13 Ill. Reg. 2036, effective February 1, 1989; amended at 22 Ill. Reg. 20083, effective NOV 2 1998.

SUBPART B: REPORTS OF ACCIDENTS OR INCIDENTS

Section 595.110 Definitions

"Accident or incident ~~Incident~~", for the purposes of this Part, shall mean any or all of the following, the cause of which is gas escaping from pipeline facilities:

personal injury requiring hospitalization;

fatality; and

property damage exceeding $25,000 ~~$5,000~~.

"Commission" shall mean the Illinois Commerce Commission.

"Gas" shall mean natural gas, flammable gas or gas which is toxic or corrosive.

"Person" shall mean any individual, firm, joint venture, partnership,

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED AMENDMENT

corporation, association, municipalities, cooperative association, and includes any trustee, receiver, assignee or personal representative thereof.

"Pipeline facilities ~~Facilities~~" shall include new and existing pipe, rights-of-way and any equipment, facility or building used in the transportation of gas or the treatment of gas during the course of such transportation.

"Transportation of gas ~~Gas~~" shall mean the gathering, transmission or distribution of gas by pipeline or its storage within this state and not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Pipeline Safety Act.

(Source: Amended at 22 Ill. Reg. 20083, effective NOV 7 1998)

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Standards of Service for Electric Utilities

2) Code Citation: 83 Ill. Adm. Code 410

3)

Section Numbers:	Adopted Action:
410.410	Repealed
410.420	Repealed
410.430	Repealed
410.440	Repealed
410.450	Repealed
410.460	Repealed
410.470	Repealed
410.480	Repealed
410.490	Repealed
410.TABLE A	Repealed

4) Statutory Authority: Implementing Section 8-301 and authorized by Section 10-101 of the Public Utilities Act [220 ILCS 5/8-301 and 10-101].

5) Effective Date of Amendments: November 7, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Do these amendments contain incorporations by reference? No

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register:

June 26, 1998, at 22 Ill. Reg. 10949

10) Has JCAR issued a Statement of Objections to these amendments? No

11) Difference(s) between proposal and final version: None

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? None required

13) Will these amendments replace emergency amendments currently in effect? Yes

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Amendments?

With the adoption of 83 Ill. Adm. Code 411, "Electric Reliability", it is

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED AMENDMENTS

appropriate to repeal those Sections of Part 410 that deal with the same subject matter.

16) Information and questions regarding these adopted amendments shall be directed to:

Conrad S. Rubinkowski
Office of General Counsel
Illinois Commerce Commission
527 East Capitol Avenue
P.O. Box 19280
Springfield, IL 62794-9280
(217)785-3922

The full text of the Adopted Amendments begins on the next page:

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED AMENDMENTS

TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: ELECTRIC UTILITIES

PART 410
STANDARDS OF SERVICE FOR ELECTRIC UTILITIES

SUBPART A: GENERAL

Section
410.10 Authorization
410.20 Application
410.30 Exemptions or Deviations in Particular Cases
410.40 Saving Clause

SUBPART B: STANDARDS OF SERVICE

Section
410.110 Records and Reports
410.120 Meter Records
410.130 Customer Meter Test Records
410.140 Station Records
410.150 Complaints
410.160 Interruptions of Service
410.170 Location of Meters
410.175 Separate Metering
410.180 Testing Facilities and Equipment
410.190 Customer Meter Test Loads
410.200 Customer Watthour Meter Accuracy Requirements
410.210 Customer Demand Meter Accuracy Requirements
410.220 Initial Tests
410.230 Periodic Test of Customer Meters
410.240 Meter Tests Requested by Customer
410.250 Commission Referee Tests
410.260 Adjustments of Bills for Meter Error
410.270 Installation Inspections
410.280 Voltage Regulation
410.290 Voltage Surveys
410.300 Standard Frequency
410.310 Grounding of Secondaries
410.320 Service Drops
410.330 Extension of Lines in Urban Area
410.340 Extension of Lines in Rural Areas
410.350 Information to Customers
410.360 Information to REAPP Customers (Repealed)

SUBPART C: ELECTRIC SERVICE RELIABILITY POLICY

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED AMENDMENTS

Section
410.410 Purpose of Subpart C (Repealed)
410.420 Definitions of Terms in Subpart C (Repealed)
410.430 Applicability of Subpart C (Repealed)
410.440 Reliability Policy (Repealed)
410.450 Record-Keeping Requirements (Repealed)
410.460 Notice and Reporting Requirements (Repealed)
410.470 Interruption Cause Categories (Repealed)
410.480 Reliability Review (Repealed)
410.490 Modification or Exemption (Repealed)

TABLE A Causes of Interruptions (Repealed)

AUTHORITY: Implementing Section 8-301 and authorized by Section 10-101 of the Public Utilities Act [220 ILCS 5/8-301 and 10-101].

SOURCE: Effective August 1, 1948; amended at 5 Ill. Reg. 6805, effective June 12, 1981; codified at 8 Ill. Reg. 12183; amended at 10 Ill. Reg. 148, effective December 23, 1985; amended at 11 Ill. Reg. 8964, effective May 1, 1987; emergency amendment at 13 Ill. Reg. 16563, effective October 10, 1989, for a maximum of 150 days; amended at 14 Ill. Reg. 3454, effective March 1, 1990; amended at 16 Ill. Reg. 2544, effective February 1, 1992; amended at 19 Ill. Reg. 2804, effective April 1, 1995; emergency amendment at 22 Ill. Reg. 11265, effective June 10, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 20087, effective NOV 7 1998.

SUBPART C: ELECTRIC SERVICE RELIABILITY POLICY

Section 410.410 Purpose of Subpart C (Repealed)

~~The Illinois Commerce Commission ("Commission") has designed the electric service reliability policy to establish:~~

~~a) Reporting requirements to help the Commission gather information on electric service reliability for each electric utility in the State of Illinois; and~~

~~b) A procedure for review of information and data on electric service reliability to determine if the Commission should adopt electric service reliability standards and, if so, the appropriate provisions to include in such standards.~~

(Source: Repealed at 22 Ill. Reg. 20087, effective NOV 7 1998)

Section 410.420 Definitions of Terms in Subpart C (Repealed)

~~For purposes of this Subpart, the following definitions shall apply:~~

~~a) "Customer" is a dwelling, business, or other location where electric service is provided. If more than one billing account exists at one location (e.g., two tenants at the same address), each active billing account is considered a customer. A customer can have one or more meter points (or service points) at a given location. If multiple meter points (or service points) exist at the location, interruption of any meter point (or service point) constitutes an interruption to the customer.~~

~~b) "Distribution circuit interruption" is an interruption originating at a point which is between the circuit interrupting device at the substation and the distribution transformer.~~

~~c) "Electric service" means the availability of electric power at the point of connection between utility equipment and customer equipment.~~

~~d) "Electric utility" or "utility" means a public utility, as defined by Section 3-105 of the Public Utilities Act ("Act") [220 ILCS 5/3-105], providing electric service to customers in Illinois.~~

~~e) "Interruption" means the loss by one or more customers of electric service for a period longer than one minute in duration and requiring human intervention by the utility to restore electric service. This definition specifically excludes occurrences of the loss of electric service when automatic switches, automatic line reclosing devices, or other automatic utility devices successfully restore electric service. In addition, the term "interruption" shall not include the following:~~

~~1) Interruptions intentionally initiated by a utility and affecting only those customers taking electric service pursuant to the provisions of an interruptible service tariff or contract approved by the Commission;~~

~~2) Interruptions intentionally initiated by a utility for nonpayment of a bill and according to the provisions of Sections 8-201, 8-202, 8-203, 8-204, 8-205 and/or 8-206 of the Act, and 83 Ill. Adm. Code 280;~~

~~3) Interruptions intentionally initiated by a utility due to tampering with service equipment;~~

~~4) Interruptions intentionally initiated by a utility due to its being denied access to service equipment located on the affected customer's private property;~~

~~5) Interruptions intentionally initiated by a utility due to hazardous conditions located on the affected customer's private property (such as a fire);~~

~~6) Interruptions intentionally initiated by a utility due to a request by the affected customer; and~~

~~7) Interruptions intentionally initiated by a valid law enforcement agency, fire department, or other governmental agency responsible for public welfare.~~

~~In addition, scheduled interruptions initiated by a utility for repair or maintenance shall not be included among the interruptions used to calculate the reliability indices. For all other purposes under this Reliability Policy, including, but not limited to, the reporting requirements under Section 410.460, the term "interruption" shall include scheduled interruptions initiated by a utility for repair or~~

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED AMENDMENTS

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED AMENDMENTS

maintenance.

f) "Interruption-duration"-means-a-period-of-time-measured-to-the-nearest one-minute-increment,-which-starts--when--a--utility--is--notified--or becomes--aware--of--an--interruption,-unless-a-utility-can-determine-a more-precise-estimate-of-the-actual-starting-time-of-an--interruption, and-ends-when-a-utility-restores-electric-service.

g) "Operating--Area"--means--the-utility's-internal-and-then-most-current geographical-segregation-of-its-service-territory-for--its--electrical transmission-and-distribution-operations.

h) "Reliability-Indices"-are-as-follows:

1) "System--Average--Interruption--Frequency--Index--(SAIFI)"-is-the average-number-of-interruptions-per-customer-during-the-year.--It is--calculated--by--dividing---the---total---annual---number---of interruptions--by--the--average-number-of-customers-served-during the-year.

SAIFI = ----Number-of-Customer-Interruptions----
Average-Number-of-Customers-Served

2) "Customer-Average-Interruption-Duration--Index--(CAIDI)"--is--the average--interruption-duration-for-those-customers-who-experience interruptions-during-the-year.--It-is-calculated-by-dividing--the annual--sum--of--all-customer-interruption-durations-by-the-total number-of-interruptions.

CAIDI = ----Sum-of-all-Interruption-Durations----
Number-of-Interruptions

3) "Customer-Average-Interruption-Frequency-Index--(CAIFI)"--is--the average---number---of---interruptions--for--those--customers--who experience-interruptions-during-the-year.--It--is--calculated--by dividing--the--total--annual-number-of-interruptions-by-the-total number-of-customers-affected-by--interruptions.---In--determining the--total-number-of-customers-affected,-each-customer-is-counted only-once-regardless-of-the--number--of--interruptions--that--the customer-may-have-experienced-during-the-year.

CAIFI = ------Number-of-Interruptions------
Number-of-Customers-Affected

i) "Worst-performing---circuits"--are--those--circuits--which,--for--each reliability-index,-are-among-the-one-percent-of--all--circuits--in--an operating--area--(or--at-least-one-circuit-for-each-reliability-index) with-the-highest-achieved-values-(lowest-performance-levels)--for--the reliability--index.---For--the-purpose-of-identifying-worst-performing circuits,-only--distribution--circuit--interruptions--(as--defined--in Section-410.420(b))-and-customers-affected-by-such-interruptions-shall be-considered-in-calculating-the-reliability-indices.

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED AMENDMENTS

(Source: Repealed at 22 Ill. Reg. 20087, effective NOV 7 1998)

Section 410.430 Applicability of Subpart C (Repealed)

The-electric--service--reliability--policy--is--applicable--to--every--electric utility,--as--defined--in--Section--410.420(d),--which--serves-more-than-15,000 customers-in-Illinois.

(Source: Repealed at 22 Ill. Reg. 20087, effective NOV 7 1998)

Section 410.440 Reliability Policy (Repealed)

Each--utility--shall--provide--service-and-facilities-which,-in-accordance-with Section-8-401-of-the-Act,-are-in-all-respects-adequate,-efficient,-reliable-and environmentally-safe-and-which,-consistent-with-these--obligations,--constitute the--least-cost-means-of-meeting-the-utility's-service-obligations.--Insofar-as would-be-consistent-with-the-utility's-obligations-to-provide--efficient,--safe and--least-cost--service,-each-utility-shall-strive-to-prevent-interruptions-of electric-service-and,-when-such-interruptions-occur,-restore--electric--service within-the-shortest-reasonable-time.

(Source: Repealed at 22 Ill. Reg. 20087, effective NOV 7 1998)

Section 410.450 Record-Keeping Requirements (Repealed)

a) Required--records.---Except--as--provided--in--subsection--(b)--below, utilities-shall-maintain,-for-the-most-recently--preceding--five--year period,-the-following-records:

1) Records--sufficient--to--determine--a-history-of-electric-service interruptions-experienced-by--each--customer--at--the--customer's current--location.---The-records-shall-be-sufficient-to-determine the-following-information-for-each-interruption:

A) Starting-date;

B) Starting-time;

C) Interruption-duration;

D) Cause;

E) Operating-area-of-the-affected-circuit(s);

F) Circuit-number(s)-of-the-affected-circuit(s);

G) Number-of-customers-affected;

H) Service-account-number-of-each-customer-affected;-and

I) Address-of-each-affected-customer-location.

2) Records-showing,-for-each-circuit,-the-total-number-of--customers served-by-the-circuit-at-the-end-of-each-year.

b) Periods--for--which--records--are--not--required.---Utilities-need-not maintain-records-reflecting-the-information-identified--in--subsection

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED AMENDMENTS

~~(a)--above--for--any-period-prior-to-calendar-year-1994.---In-addition, any-utility-which,-as-of-January-1,-1994,-does-not-have-the--technical capability--to--collect--and--record--some--or--all-of-the-information identified-in-Section-410.450(a)-need-not-maintain-records--reflecting such-information-for-any-period-prior-to-January-1,-1999.~~

(Source: Repealed at 22 Ill. Reg. 20087, effective NOV 7 1998)

Section 410.460 Notice and Reporting Requirements (Repealed)

~~a) Telephone-or-facsimile-notice.---A--utility--must--provide--notice--by telephone--or--by--facsimile--transmission--to--the--Consumer-Services Division-of--the--Commission--when--any--single--event--(e.g.,--storm, tornado,--equipment-malfunction,-etc.)-causes-interruptions-for-10,000 or-more-of-the-utility's-customers-for-three--hours--or--more.---After such--interruptions--have--continued--for--three-hours,-a-utility-must provide-notice-within-one-hour--when--the--notice--would--be--provided during--normal--business--hours,--or-within-the-first-hour-of-the-next business-day.--To-the-extent-that-data-and-information-are-known,-such notice-shall-include-the-following:~~

~~1) A-reasonable-estimate-of-the-number-of-customers-the-interruption affects;~~

~~2) Starting-date;~~

~~3) Starting-time;~~

~~4) Interruption-duration;~~

~~5) Location,--described--as--precisely--as--possible--in---generally recognized--and--geographically--oriented--terms--such--as-street address,-subdivision,-or-community;~~

~~6) Cause;~~

~~7) The-date-and-time-when-the-utility-expects--to--restore--electric service;-and~~

~~8) The--name--and--telephone--number-of-a-utility-representative-the Commission-Staff-can--contact--for--more--information--about--the interruption.~~

~~b) Annual--report.---On-or-before-June-1-of-each-year,-each-utility-shall file-with-the-Chief-Clerk-of-the-Commission--an--Annual--Report--which includes-the-following-information:~~

~~1) A--general--assessment--of--electric--service--reliability-in-the utility's-service-territory.--(The--assessment--shall--include--a review--of-programs-the-utility-uses-to-provide-reliable-service; the-cost-of-such-programs;--a--description--of--new--programs--or changes-to-existing-programs-which-the-utility-is-considering-for the--future;-and-any-other-information-the-utility-deems-relevant to-electric-service-reliability-in-its-service-territory.);~~

~~2) A-table-showing-the-achieved-level-of--each--of--the--reliability indices--for-each-operating-area-of-the-utility-for-the-preceding calendar-year-(provided,-however,-that-for-any--reporting--period commencing--before--April-1,-1998,-utilities-will-not-be-required to-report-the-CAIFI--reliability--index--as--defined--in--Section 410.420(h)(3));~~

~~3) A--list--showing-the-worst-performing-circuits-for-each-operating area--of--the--utility.---(The---designation---of---circuits---as "worst-performing--circuits"--shall--not,--in--and--of-itself,-be deemed-to-constitute-a-violation-of-the--Act--or--any--Commission order,-rule,-direction,-or-requirement.);~~

~~4) A--statement-of-the-operating-and-maintenance-history-of-circuits designated-as-worst-performing-circuits;--a--description--of--any action--taken--or--planned-to-improve-the-performance-of-any-such circuit-(which-shall-include-information-concerning-the--cost--of such--action);--and-a-schedule-for-completion-of-any-such-action. (The-utility-may-decide,-based-on-cost--considerations--or--other factors,-that-it-should-take-no-action-to-improve-the-performance of--one-or-more-circuits-designated-as-worst-performing-circuits. If--the--utility--decides--to--take--no--action--to--improve--the performance---of---one---or---more---circuits----designated----as worst-performing-circuits,-the-utility-shall-explain-its-decision in-its-Annual-Report.);~~

~~5) A-discussion-of-the-status-of-actions-which-the-utility-indicated in--prior--Annual--Reports-that-it-would-take-to-improve-electric service-reliability;-and~~

~~6) The--name,--address---and---telephone---number---of---a---utility representative--who--can--be-contacted-for-additional-information regarding-the-Annual-Report.~~

~~c) Customer-report.--A-utility-shall,-upon-request-made-by-a-customer--or the--Consumer--Services--Division--of--the--Commission,-provide-to-the customer-and/or-the-Consumer-Services--Division,--within--thirty--days after--the--request,--a-report-on-all-interruptions-which-the-customer making-the-request-or--subject--to--the--Consumer--Service--Division's request--has--experienced--at--the-customer's-current-service-location during-the-most-recently-preceding-five-calendar--years.---The--report shall--identify--for--each--interruption--the-information-specified-in Section-410.450(a)(1)(A)-(D).--Notwithstanding-the-provisions-of--this subsection,--a-utility-is-not-required-to-report-data-pursuant-to-this Section-which--Section--410.450(b)--does--not--require--a--utility--to maintain.---This--subsection--does-not-alter-the-provisions-of-83-Ill. Adm.-Code-200-and-280-which-relate-to-informal--and--formal--complaint procedures.~~

~~d) Staff-Report.--On-or-before-June-1,-2000-and-June-1-of-each-succeeding year,--each--utility--shall--submit--to--the--Program--Director-of-the Consumer-Services-Division-of-the-Commission-a-report--which--includes the-following-information:~~

~~1) A--list-showing-the-0.1-percent-of-the-utility's-customers-or-100 customers,-whichever-is--smaller,--with--the--largest--number--of interruptions-during-the-prior-year.--(The-list-shall-include-the number---of--interruptions--experienced--by--each--customer,--and~~

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED AMENDMENTS

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED AMENDMENTS

identify the circuit involved for each customer by a unique circuit number assigned by the utility. Each customer included in such a list shall be identified by a unique number assigned by the utility and not that customer's name and/or account number.); and

2) A list showing the 0.1 percent of the utility's customers or 100 customers, whichever is smaller, with the largest number of interruption duration hours during the prior year. (The list shall include the number of interruption duration hours experienced by each customer, and identify the circuit involved for each customer by a unique circuit number assigned by the utility. Each customer included in such a list shall be identified by a unique number assigned by the utility and not that customer's name and/or account number.).

e) For any reporting period commencing before April 1, 1998, if the actual value of any component needed to compute the information required by subsections (b)(2) and/or (b)(3) above is not available, utilities shall use reasonable estimates of such components. For any reporting period commencing after April 1, 1998, utilities may rely upon reasonable estimates of any components needed to compute the information required by subsections (b)(2), (b)(3), (c) and/or (d) above in the event that weather related interruptions or other circumstances render the use of actual data impracticable or cost ineffective. When a utility relies upon such reasonable estimates, the utility shall identify the data which is estimated data and explain the circumstances requiring the use of estimated data. Upon request of the Commission Staff or a customer, the utility also shall furnish an explanation of the method or methods used to generate the estimated data.

(Source: Repealed at 22 Ill. Reg. 20087, effective NOV 2 1998)

Section 410.470 Interruption Cause Categories (Repealed)

In adhering to the interruption recordkeeping and reporting requirements set forth in Section 410.450 and Section 410.460, each utility shall classify and report on the cause of each interruption using the cause categories and interruption code descriptions given in Table A of this Part.

(Source: Repealed at 22 Ill. Reg. 20087, effective NOV 2 1998)

Section 410.480 Reliability Review (Repealed)

a) After all utilities have filed the third Annual Report required by Section 410.460(b), the Commission may elect to initiate a proceeding for the purpose of deciding whether to adopt electric service reliability standards and, if so, the appropriate provisions for such standards. In determining whether to adopt electric service reliability standards and, if so, the appropriate provisions for such standards, the Commission shall, at a minimum, consider the following:

1) Information submitted pursuant to Section 410.460;

2) The nature and cost of programs that utilities have designed to maintain and improve electric service reliability;

3) The nature and cost of the utilities' interruption data record keeping and reporting capabilities;

4) Information developed from surveys designed to learn whether customers believe that utilities should improve the level of electric service reliability and, if so, whether customers are willing to pay rates which reflect the associated costs; and

5) Testimony on the subject of electric service reliability submitted in Commission proceedings.

b) The Commission may elect to initiate an investigation of a utility to determine whether the utility provides electric service consistent with the reliability policy set forth in Section 410.440. Based on the record developed in such an investigation, the Commission may enter an order requiring a utility to take such corrective action as the Commission deems necessary to improve the electric service reliability of the utility.

(Source: Repealed at 22 Ill. Reg. 20087, effective NOV 2 1998)

Section 410.490 Modification or Exemption (Repealed)

a) Any utility may file an application requesting modification of or exemption from any Section of this Subpart as such Section applies to the utility filing the application. For good cause shown, the Commission may grant such a request for modification or exemption. A petition for exemption or modification shall be filed pursuant to 83 Ill. Adm. Code 200 and shall set forth specific reasons and facts in support of the requested exemption or modification.

b) In determining whether good cause has been shown, the Commission shall consider, among other things:

1) The extent to which circumstances beyond the control of the utility have made compliance with the applicable Section extremely difficult;

2) Whether the utility has made a good faith effort to comply with the applicable Section in a timely fashion; and

3) Whether other information, which the utility would provide if the waiver is granted, permits the Commission Staff to review the subject filing in a complete, timely and meaningful manner.

(Source: Repealed at 22 Ill. Reg. 20087, effective NOV 2 1998)

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED AMENDMENTS

ILLINOIS COMMERCE COMMISSION

NOTICE OF ADOPTED AMENDMENTS

Section 410.TABLE A Causes of Interruptions (Repealed)

Interruption-Cause-Categories	Interruption-Code-Description
Utility/Contractor-Personnel-Errors	Unclassified-Error
	Switching-Error
	Accident-by-Utility
	Testing-Error
	Dig-In-by-Utility
	Accident-by-Utility-Contractor
	Dig-In-by-Utility-Contractor
Customer	Overload
	Customer-Equipment
Public	Foreign-Object
	Fire
	Vandalism
	Accident-by-Others
	Dig-In-by-Others
Weather-Related	Lightning
	Wind
	Ice
	Sub-Zero-Cold
	Flooding
Animal-Related	Wildlife
Tree-Related	Tree-Contact
	Limb-Broken
Overhead-Equipment-Related	Contamination
	Malfunction
	Broken-Fuse-Link
Underground-Equipment-Related	Underground-Failure
	Contamination
	Malfunction
Scheduled	Initiated-by-Utility-for-Maintenance or-Repair
Station-Equipment-Related	Contamination
	Malfunction
Unknown	Unknown
Other	None/Other

(Source: Repealed at 22 Ill. Reg. 20087, effective NOV 1 1998)

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Food Stamps

2) Code Citation: 89 Ill. Adm. Code 121

3)

Section Numbers:	Adopted Action:
121.7	Amendment
121.22	Amendment
121.57	Amendment
121.60	Amendment
121.61	Amendment
121.63	Amendment
121.64	Amendment
121.120	Amendment

4) Statutory Authority: Implementing Sections 12-4.4 through 12-4.6 and authorized by 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-4.4 through 12-4.6 and 12-13].

5) Effective Date of Amendments: November 1, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Do these amendments contain incorporations by reference? No

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register:

July 24, 1998 (22 Ill. Reg. 13264)

10) Has JCAR Issued a Statement of Objections to this Rule? No

11) Difference(s) between proposal and final version: The following changes were made in the text of the proposed amendments:

1. "CHAPTER I" was changed to "CHAPTER IV" in the Table of Contents.

2. "Section 121.18" was added in the Table of Contents.

3. In the Table of Contents, Section 121.98 was changed to "Client Training for the Electronic Benefits Transfer (EBT)System.

4. "Section 121.105 State Food Program" was added in the Table of Contents.

5. The Source Notes were updated.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

6. In Section 121.7(b), "see subsection 121.7(e)" was changed to "see subsection (e) of this Section".

7. The Subpart Headings were added.

8. In Section 121.22(d), "See Section 121.11(g) and (h)" was changed to "See subsections (g) and (h)".

9. In Section 121.57(b)(2)(A)(i), "IRA's" was changed to "IRAs".

10. The amounts in Sections 121.60(b), 121.61(b) and 121.64(b) were increased.

11. Section 121.63 was renumbered correctly.

12. In Section 121.63(f)(1), the shelter costs deduction was increased to $275.00.

13. In Section 121.63(f)(5), ";" was changed to ":".

14. In Section 121.63(g)(3), the comma after "electricity" was struck.

15. In Section 121.63(g)(5), the comma was replaced by "or".

16. In Section 121.120(d)(3), "of" was changed to "after".

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

13) Will these amendments replace an emergency amendments currently in effect? No

14) Are there any amendments pending on this Part: Yes

Section Numbers	Proposed Action	Illinois Register Citation
121.105	Amendment	22 Ill. Reg. 11671
121.105	Repeal	22 Ill. Reg. 19677

15) Summary and Purpose of Rule:

These amendments implement a number of changes in the Food Stamp Program. These changes are being made to incorporate into the rules changes mandated by federal Food Stamp regulations. The changes are as follows:

Expedited Service

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

A change is being made in the provisions for expedited service which provides that food stamp units applying for recertification between the 15th and the last day of the last month of their current certification period will not be entitled to expedited service.

Social Security Numbers

A change is also being made in the Social Security provisions so that clients will no longer be required to immediately apply for a Social Security Number for a newborn. These amendments establish that clients will have a longer period of time to provide verification of application for a Social Security Number (SSN) for a newborn. Food stamp units with a newborn will have until their next recertification or six months from the date of the infant's birth, whichever is later, to submit proof of application for a SSN for the infant.

Assets

Pursuant to provisions of the Mickey Leland Childhood Hunger Relief Act, the value of prepaid funeral agreements over $1500.00 per person will be considered.

Gross and Net Monthly Income Eligibility Standards and Benefit Amounts

These amendments increase the Gross and Net Monthly Income Eligibility Standards and the Food Stamp Benefit Amounts.

Recertification of Eligibility

In order to incorporate into the rules clarification of federal food stamp policy, this rulemaking establishes that the application of a food stamp unit who files a request for recertification but fails to appear for a scheduled interview or provide requested verifications within 10 calendar days will be denied. If a food stamp unit requests an interview or provides requested verification within 30 days from the date of its recertification application, the application will be reopened. If the unit is found eligible, the local office will provide the unit benefits within 30 calendar days from the date of application or 10 calendar days from the date the interview is completed or the verification is provided, whichever is later. A food stamp unit will not receive benefits for a subsequent approval period before the end of its current approval period. In addition, this rulemaking provides that if a recertification application is pending and uninterrupted benefits cannot be provided due to the 10-day verification standard, then the local office must provide benefits within five working days after the date the household provides the verification.

Air Conditioning/Heating Standard and Electricity Standard Allowances

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

These amendments replace the standard utility allowance with the air conditioning/heating standard allowance and the electricity standard allowance. Federal food stamp regulations allow states to develop utility standards for use in calculating food stamp benefits. Currently, those food stamp households that are billed for heating or air conditioning, or both, separately from their rent or mortgage may claim the standard utility allowance. The standard utility allowance is used in determining the household's eligibility for food stamps and the level of benefits.

The USDA Food and Nutrition Services (FNS) has recently approved the use of a second utility standard (i.e., the electricity standard allowance) for those food stamp households that are billed for electricity but are not billed for heating or air conditioning. These proposed amendments replace the standard utility allowance with the air conditioning/heating standard allowance and the electricity standard allowance. The air conditioning/heating standard allowance of $211.00 will be used for those households that are billed for heating or air conditioning, or both. The electricity standard allowance of $147.00 will be used for those households that are not billed for air conditioning or heating but are billed for electricity.

This rulemaking establishes that if a household qualifies for use of one of the utility standards, the amount of the household's actual utility expenses which may be in excess of the standard allowance amount will not be allowed. Use of the electricity standard allowance and the air conditioning/heating standard allowance will result in an increase in food stamp benefits for those clients whose actual utility expenses are less than the standard allowance amounts. However, use of the appropriate standard allowance amount will result in a decrease in food stamp benefits for those clients who have been claiming actual utility expenses in excess of the standard allowance amounts.

16) Information and answers to questions regarding these adopted amendments shall be directed to:

Mrs. Susan Warrner Weir, Bureau Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue East
3rd Floor, Harris Bldg.
Springfield, Illinois 62762
Telephone number: (217) 785-9772
FAX: (217) 557-1547

The full text of Adopted Amendments begins on the next page:

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

TITLE 89: SOCIAL SERVICES
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES
SUBCHAPTER b: ASSISTANCE PROGRAMS

PART 121
FOOD STAMPS

SUBPART A: APPLICATION PROCEDURES

Section
121.1 Application for Assistance
121.2 Time Limitations on the Disposition of an Application
121.3 Approval of an Application and Initial Authorization of Assistance
121.4 Denial of an Application
121.5 Client Cooperation
121.6 Emergency Assistance
121.7 Expedited Services
121.10 Interviews

SUBPART B: NON-FINANCIAL FACTORS OF ELIGIBILITY

Section
121.18 Work Requirement
121.19 Ending a Voluntary Quit Disqualification
121.20 Citizenship
121.21 Residence
121.22 Social Security Numbers
121.23 Work Registration/Participation Requirements
121.24 Individuals Exempt From Work Registration Requirements
121.25 Failure to Comply
121.26 Period of Sanction
121.27 Voluntary Job Quit
121.28 Good Cause for Voluntary Job Quit
121.29 Exemptions from Voluntary Quit Rule

SUBPART C: FINANCIAL FACTORS OF ELIGIBILITY

Section
121.30 Unearned Income
121.31 Exempt Unearned Income
121.32 Education Benefits
121.33 Unearned Income In-Kind
121.34 Lump Sum Payments and Income Tax Refunds
121.40 Earned Income
121.41 Budgeting Earned Income
121.50 Exempt Earned Income
121.51 Income from Work/Study/Training Programs

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

121.52 Earned Income from Roomer and Boarder
121.53 Income From Rental Property
121.54 Earned Income In-Kind
121.55 Sponsors of Aliens
121.57 Assets
121.58 Exempt Assets
121.59 Asset Disregards

SUBPART D: ELIGIBILITY STANDARDS

Section
121.60 Net Monthly Income Eligibility Standards
121.61 Gross Monthly Income Eligibility Standards
121.62 Income Which Must Be Annualized
121.63 Deductions From Monthly Income
121.64 Food Stamp Benefit Amount

SUBPART E: HOUSEHOLD CONCEPT

Section
121.70 Composition of the Assistance Unit
121.71 Living Arrangement
121.72 Nonhousehold Members
121.73 Ineligible Household Members
121.74 Strikers
121.75 Students
121.76 Households Receiving AFDC, SSI, Interim Assistance and/or GA - Categorical Eligibility

SUBPART F: MISCELLANEOUS PROGRAM PROVISIONS

Section
121.80 Fraud Disqualification (Renumbered)
121.81 Initiation of Administrative Fraud Hearing (Repealed)
121.82 Definition of Fraud (Renumbered)
121.83 Notification To Applicant Households (Renumbered)
121.84 Disqualification Upon Finding of Fraud (Renumbered)
121.85 Court Imposed Disqualification (Renumbered)
121.90 Monthly Reporting and Retrospective Budgeting
121.91 Monthly Reporting
121.92 Retrospective Budgeting
121.93 Issuance of Food Stamp Benefits
121.94 Replacement of the EBT Card or Food Stamp Benefits
121.95 Restoration of Lost Benefits
121.96 Uses For Food Coupons
121.97 Supplemental Payments
121.98 Client Training for the Electronic Benefits Transfer (EBT) System
121.105 State Food Program

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

121.120 Recertification of Eligibility
121.130 Residents of Shelters for Battered Women and their Children
121.131 Fleeing Felons and Probation/Parole Violators
121.135 Incorporation By Reference
121.140 Small Group Living Arrangement Facilities and Drug/Alcoholic Treatment Centers

SUBPART G: INTENTIONAL VIOLATIONS OF THE PROGRAM

Section
121.150 Definition of Intentional Violations of the Program
121.151 Penalties for Intentional Violations of the Program
121.152 Notification To Applicant Households
121.153 Disqualification Upon Finding of Intentional Violation of the Program
121.154 Court Imposed Disqualification

SUBPART H: FOOD STAMP EMPLOYMENT AND TRAINING PROGRAM

Section
121.160 Persons Required to Participate
121.162 Participation and Cooperation Requirements
121.164 Orientation
121.166 Assessment and Employability Plan
121.170 Job Search Component
121.172 Basic Education Component
121.174 Job Readiness Component
121.176 Work Experience Component
121.178 Job Training Component
121.180 Grant Diversion Component
121.182 Earnfare Component
121.184 Sanctions
121.186 Good Cause for Failure to Cooperate
121.188 Supportive Services
121.190 Conciliation and Fair Hearings
121.200 Types of Claims (Recodified)
121.201 Establishing a Claim for Intentional Violation of the Program (Recodified)
121.202 Establishing a Claim for Unintentional Household Errors and Administrative Errors (Recodified)
121.203 Collecting Claim Against Households (Recodified)
121.204 Failure to Respond to Initial Demand Letter (Recodified)
121.205 Methods of Repayment of Food Stamp Claims (Recodified)
121.206 Determination of Monthly Allotment Reductions (Recodified)
121.207 Failure to Make Payment in Accordance with Repayment Schedule (Recodified)
121.208 Suspension and Termination of Claims (Recodified)

SUBPART I: WORK REQUIREMENT FOR FOOD STAMPS

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

Section
121.220 Workfare Components
121.221 Meeting the Work Requirement with the Earnfare Component
121.222 Volunteer Community Work Component
121.223 Work Experience Component
121.224 Supportive Service Payments to Meet the Work Requirement

AUTHORITY: Implementing Sections 12-4.4 through 12-4.6 and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-4.4 through 12-4.6 and 12-13].

SOURCE: Adopted December 30, 1977; amended at 3 Ill. Reg. 5, p. 875, effective February 2, 1979; amended at 3 Ill. Reg. 31, p. 109, effective August 3, 1979; amended at 3 Ill. Reg. 33, p. 399, effective August 18, 1979; amended at 3 Ill. Reg. 41, p. 165, effective October 11, 1979; amended at 3 Ill. Reg. 42, p. 230, effective October 9, 1979; amended at 3 Ill. Reg. 44, p. 173, effective October 19, 1979; amended at 3 Ill. Reg. 46, p. 36, effective November 2, 1979; amended at 3 Ill. Reg. 47, p. 96, effective November 13, 1979; amended at 3 Ill. Reg. 48, p. 1, effective November 15, 1979; peremptory amendment at 4 Ill. Reg. 3, p. 49, effective January 9, 1980; peremptory amendment at 4 Ill. Reg. 9, p. 259, effective February 23, 1980; amended at 4 Ill. Reg. 10, p. 253, effective February 27, 1980; amended at 4 Ill. Reg. 12, p. 551, effective March 10, 1980; emergency amendment at 4 Ill. Reg. 29, p. 294, effective July 8, 1980, for maximum of 150 days; amended at 4 Ill. Reg. 37, p. 797, effective September 2, 1980; amended at 4 Ill. Reg. 45, p. 134, effective October 17, 1980; amended at 5 Ill. Reg. 766, effective January 2, 1981; amended at 5 Ill. Reg. 1131, effective January 16, 1981; amended at 5 Ill. Reg. 4586, effective April 15, 1981; peremptory amendment at 5 Ill. Reg. 5722, effective June 1, 1981; amended at 5 Ill. Reg. 7071, effective June 23, 1981; peremptory amendment at 5 Ill. Reg. 10062, effective October 1, 1981; amended at 5 Ill. Reg. 10733, effective October 1, 1981; amended at 5 Ill. Reg. 12736, effective October 29, 1981; amended at 6 Ill. Reg. 1653, effective January 17, 1982; amended at 6 Ill. Reg. 2707, effective March 2, 1982; amended at 6 Ill. Reg. 8159, effective July 1, 1982; amended at 6 Ill. Reg. 10208, effective August 9, 1982; amended at 6 Ill. Reg. 11921, effective September 21, 1982; amended at 6 Ill. Reg. 12318, effective October 1, 1982; amended at 6 Ill. Reg. 13754, effective November 1, 1982; amended at 7 Ill. Reg. 394, effective January 1, 1983; codified at 7 Ill. Reg. 5195; amended at 7 Ill. Reg. 5715, effective May 1, 1983; amended at 7 Ill. Reg. 8118, effective June 24, 1983; peremptory amendment at 7 Ill. Reg. 12899, effective October 1, 1983; amended at 7 Ill. Reg. 13655, effective October 4, 1983; peremptory amendment at 7 Ill. Reg. 16067, effective November 18, 1983; amended at 7 Ill. Reg. 16169, effective November 22, 1983; amended at 8 Ill. Reg. 5673, effective April 18, 1984; amended at 8 Ill. Reg. 7249, effective May 16, 1984; peremptory amendment at 8 Ill. Reg. 10086, effective July 1, 1984; amended at 8 Ill. Reg. 13284, effective July 16, 1984; amended at 8 Ill. Reg. 17900, effective September 14, 1984; amended (by adding Section being codified with no substantive change) at 8 Ill. Reg. 17898; peremptory amendment at 8 Ill. Reg. 19690, effective October 1, 1984; peremptory amendment

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

at 8 Ill. Reg. 22145, effective November 1, 1984; amended at 9 Ill. Reg. 302, effective January 1, 1985; amended at 9 Ill. Reg. 6804, effective May 1, 1985; amended at 9 Ill. Reg. 8665, effective May 29, 1985; peremptory amendment at 9 Ill. Reg. 8898, effective July 1, 1985; amended at 9 Ill. Reg. 11334, effective July 8, 1985; amended at 9 Ill. Reg. 14334, effective September 6, 1985; peremptory amendment at 9 Ill. Reg. 15582, effective October 1, 1985; amended at 9 Ill. Reg. 16889, effective October 16, 1985; amended at 9 Ill. Reg. 19726, effective December 9, 1985; amended at 10 Ill. Reg. 229, effective December 20, 1985; peremptory amendment at 10 Ill. Reg. 7387, effective April 21, 1986; peremptory amendment at 10 Ill. Reg. 7941, effective May 1, 1986; amended at 10 Ill. Reg. 14692, effective August 29, 1986; peremptory amendment at 10 Ill. Reg. 15714, effective October 1, 1986; Sections 121.200 thru 121.208 recodified to 89 Ill. Adm. Code 165 at 10 Ill. Reg. 21094; peremptory amendment at 11 Ill. Reg. 3761, effective February 11, 1987; emergency amendment at 11 Ill. Reg. 3754, effective February 13, 1987, for a maximum of 150 days; emergency amendment at 11 Ill. Reg. 9968, effective May 15, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 10269, effective May 22, 1987; amended at 11 Ill. Reg. 10621, effective May 25, 1987; peremptory amendment at 11 Ill. Reg. 11391, effective July 1, 1987; peremptory amendment at 11 Ill. Reg. 11855, effective June 30, 1987; emergency amendment at 11 Ill. Reg. 12043, effective July 6, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 13635, effective August 1, 1987; amended at 11 Ill. Reg. 14022, effective August 10, 1987; emergency amendment at 11 Ill. Reg. 15261, effective September 1, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 15480, effective September 4, 1987; amended at 11 Ill. Reg. 15634, effective September 11, 1987; amended at 11 Ill. Reg. 18218, effective October 30, 1987; peremptory amendment at 11 Ill. Reg. 18374, effective October 30, 1987; amended at 12 Ill. Reg. 877, effective December 30, 1987; emergency amendment at 12 Ill. Reg. 1941, effective December 31, 1987, for a maximum of 150 days; amended at 12 Ill. Reg. 4204, effective February 5, 1988; amended at 12 Ill. Reg. 9678, effective May 23, 1988; amended at 12 Ill. Reg. 9922, effective June 1, 1988; amended at 12 Ill. Reg. 11463, effective June 30, 1988; amended at 12 Ill. Reg. 12824, effective July 22, 1988; emergency amendment at 12 Ill. Reg. 14045, effective August 19, 1988, for a maximum of 150 days; peremptory amendment at 12 Ill. Reg. 15704, effective October 1, 1988; peremptory amendment at 12 Ill. Reg. 16271, effective October 1, 1988; amended at 12 Ill. Reg. 20161, effective November 30, 1988; amended at 13 Ill. Reg. 3890, effective March 10, 1989; amended at 13 Ill. Reg. 13619, effective August 14, 1989; peremptory amendment at 13 Ill. Reg. 15859, effective October 1, 1989; amended at 14 Ill. Reg. 729, effective January 1, 1990; amended at 14 Ill. Reg. 6349, effective April 13, 1990; amended at 14 Ill. Reg. 13202, effective August 6, 1990; peremptory amendment at 14 Ill. Reg. 15158, effective October 1, 1990; amended at 14 Ill. Reg. 16983, effective September 30, 1990; amended at 15 Ill. Reg. 11150, effective July 22, 1991; amended at 15 Ill. Reg. 11957, effective August 12, 1991; peremptory amendment at 15 Ill. Reg. 14134, effective October 1, 1991; emergency amendment at 16 Ill. Reg. 757, effective January 1, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 10011, effective June 15, 1992; amended at 16 Ill. Reg. 13900, effective August 31, 1992; emergency amendment at 16 Ill. Reg. 16221, effective

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

October 1, 1992, for a maximum of 150 days; peremptory amendment at 16 Ill. Reg. 16345, effective October 1, 1992; amended at 16 Ill. Reg. 16624, effective October 23, 1992; amended at 17 Ill. Reg. 644, effective December 31, 1992; amended at 17 Ill. Reg. 4333, effective March 19, 1993; amended at 17 Ill. Reg. 14625, effective August 26, 1993; emergency amendment at 17 Ill. Reg. 15149, effective September 7, 1993, for a maximum 150 days; peremptory amendment at 17 Ill. Reg. 17477, effective October 1, 1993; expedited correction at 17 Ill. Reg. 21216, effective October 1, 1993; amended at 18 Ill. Reg. 2033, effective January 21, 1994; emergency amendment at 18 Ill. Reg. 2509, effective January 27, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 3427, effective February 28, 1994; amended at 18 Ill. Reg. 8921, effective June 3, 1994; amended at 18 Ill. Reg. 12829, effective August 5, 1994; amended at 18 Ill. Reg. 14103, effective August 26, 1994; amended at 19 Ill. Reg. 5626, effective March 31, 1995; amended at 19 Ill. Reg. 6648, effective May 5, 1995; emergency amendment at 19 Ill. Reg. 12705, effective September 1, 1995, for a maximum of 150 days; peremptory amendment at 19 Ill. Reg. 13595, effective October 1, 1995; amended at 20 Ill. Reg. 1593, effective January 11, 1996; peremptory amendment at 20 Ill. Reg. 2229, effective January 17, 1996; amended at 20 Ill. Reg. 7902, effective June 1, 1996; amended at 20 Ill. Reg. 11935, effective August 14, 1996; emergency amendment at 20 Ill. Reg. 13381, effective October 1, 1996, for a maximum of 150 days; emergency amendment at 20 Ill. Reg. 13668, effective October 8, 1996, for a maximum of 150 days; amended at 21 Ill. Reg. 3156, effective February 28, 1997; amended at 21 Ill. Reg. 7733, effective June 4, 1997; recodified from the Department of Public Aid to the Department of Human Services at 21 Ill. Reg. 9322; emergency amendment at 22 Ill. Reg. 1954, effective January 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 5502, effective March 4, 1998; amended at 22 Ill. Reg. 7969, effective May 15, 1998; emergency amendment at 22 Ill. Reg. 10660, effective June 1, 1998, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 12167, effective July 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 16320, effective September 1, 1998; amended at 22 Ill. Reg. 19787, effective October 28, 1998; emergency amendment at 22 Ill. Reg. 19934, effective November 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 20099, effective NOV 1 1998.

SUBPART A: APPLICATION PROCEDURES

Section 121.7 Expedited Service

a) Households in need of immediate food assistance shall be provided expedited service if the household:
   1) has liquid assets (such as, cash on hand, checking or savings accounts) of no more than $100, and has gross monthly income for the fiscal month of application of less than $150; or
   2) has liquid assets of no more than $100, and contains a migrant or seasonal farmworker who is destitute. A migrant or seasonal farmworker household meeting one of the following criteria is considered destitute:

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

A) Migrant or seasonal farmworker households whose only income for the fiscal month of application was received prior to the date of application and was from a terminated source are considered destitute.
   i) Income is considered as coming from a terminated source if it is received monthly or more frequently and will not be received again from the same source during the fiscal month of application or during the month following application, or it is normally received less often than monthly and will not be received in the month the next payment is normally received.
   ii) A household member who changes jobs but continues to work for the same employer is considered as still receiving income from the same source.
   iii) Migrant households which have received their last wages from a grower, food processor, livestock, nursery or other employer are considered destitute.

B) Income from a New Source
   i) Migrant or seasonal farmworker households whose only income, for the fiscal month in which the application is filed, is from a new source are considered destitute if income or more than $25.00 will not be received from the new source by the 10th calendar day following the date of application.
   ii) Income is considered as coming from a new source if it is normally received on a monthly basis or more frequently and more than $25.00 has not been received from the source within 30 days prior to the date the application was filed, or it is normally received less often than monthly and income of more than $25.00 was not received within the last normal interval between regular payments.

C) Households may receive income from a terminated source prior to the date of application and income from a new source after the date of application. Such households may be considered destitute if they receive no other income in the fiscal month of application and income of more than $25.00 from the new source will not be received by the 10th calendar day after the date of initial application.

D) The receipt of a wage advance for the travel costs of a new employee does not affect the determination of whether subsequent payments from the employer are from a new source of income or whether a household is to be considered destitute.

3) has combined gross monthly income and liquid resources which are less than the household's monthly rent or mortgage and utility costs.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

b) A household may be entitled to expedited service but factors of eligibility (see subsection ~~121.7~~(e) of this Section) may make the household ineligible to receive food stamp benefits or eligible for an amount less than the maximum monthly benefit amount for the household size.

c) If a household is not entitled to expedited service, the Department will continue to process the application using the regular application procedures (found at Section 121.2). The application will only be denied if the household is ineligible under regular processing standards.

d) Processing Time Standard

1) The first day of the time standard is the calendar day following the day the signed application was filed. The date of application is the day the signed application is received in the correct local office.

2) The Department shall process applications for eligible households entitled to expedited service within the following processing time standards:

A) If entitlement for expedited service is discovered at the date of application, benefits shall be made available to the household no later than the fifth calendar day following the date of application.

B) If entitlement to expedited service is discovered during normal processing of the application, benefits shall be made available no later than the fifth calendar day following the day entitlement to expedited service was discovered.

e) Households entitled to expedited service shall be interviewed no later than the work day following the date of application. Households entitled to expedited service are given an interview appointment on the day the signed application is filed. If the applicant fails to appear for the scheduled interview, the time frame for expedited service no longer applies (see Section 121.2 for the time limitations of the disposition of an application). The applicant's application will be processed using the regular processing standards found at Section 121.2.

f) When a migrant household is entitled to expedited service and a two-month certification period is assigned, the Department shall authorize the second month's benefits without requiring verification which must be obtained from another state. However, the out-of-state verification must be obtained before additional benefits will be authorized in a new certification period. Migrant households shall be entitled to postpone out-of-state verifications for a second month only once each season.

g) Prior to certification for expedited service, only the applicant's identify (for example, driver's license and voter registration card) must be verified. Income (for example, pay stubs), liquid assets (for example, checking and savings account statement) and residency (for example, drivers license and voter registration card) shall be

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

verified if verification will not cause benefits to be delayed.

h) Food stamp units applying for recertification between the 15th and the last day of the last month of their current certification period are not entitled to expedited service.

(Source: Amended at 22 Ill. Reg. 20099, effective NOV 1 1998)

SUBPART B: NON-FINANCIAL FACTORS OF ELIGIBILITY

Section 121.22 Social Security Numbers

a) With the exception of categorically eligible households and households entitled to expedited service, all members of the food stamp household must furnish to the Department social security numbers (SSNs) or provide proof of application for a SSN.

b) Households entitled to expedited services are asked to provide a SSN or provide proof of application for a SSN prior to the authorization of the household's first month of benefits. If the household member or members do not have one prior to the authorization of the next month's issuance, the member or members shall be allowed to participate for the full month while awaiting receipt of the SSN. The provisions of (c), ~~(e),~~ (f), ~~and~~ (g) and (h) of this Section are applicable to households entitled to expedited service. However, verification of the SSN is not required prior to certification of expedited service.

c) If more than one social security number has been assigned to any individual, all numbers must be furnished. If a social security number cannot be furnished either because a social security number has not been issued or is not known, application must be made for a social security number.

d) For regular application processing and when a new member is added, household members that have applied for a SSN are allowed to participate for one full month of benefits. If the initial month of benefits is prorated, the household member may participate for the initial month of prorated benefits and the first full month of benefits. If the SSN is not received by the end of the household member's first full month of participation, the household member is disqualified unless good cause exists. See subsections ~~Sections 121.22 (f) and~~ (g) and (h) for good cause definition.

e) Foodstamp units with a newborn have until their next recertification or six months from the date of the infant's birth, whichever is later, to submit proof of application for a SSN for the infant.

f)~~e)~~ A household member who refuses to furnish the social security number to the Department, refuses to allow verification such as a social security card or W-2 Form or refuses to apply for a social security number is ineligible to participate in the food stamp program until the requirement is met.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

g)~~f)~~ Good cause for failure to provide a SSN exists if the household member can provide documentary evidence that the household member has applied for the number and made every effort to supply the Social Security Administration (SSA) with any necessary information such as a birth certificate. If the household does show good cause, benefits are allowed pending receipt of the SSN card ~~for the next full month of the certification period or for a new member, for the second month following his or her addition to the household. The household member will be requested to apply for the SSN through the Department.~~

h)~~g)~~ A household member who has provided any needed information will not be disqualified if the SSN is not received from the Social Security Administration within the prescribed time limits.

(Source: Amended at 22 Ill. Reg. 20099, effective NOV 1 1998)

SUBPART C: FINANCIAL FACTORS OF ELIGIBILITY

Section 121.57 Assets

a) The value of nonexempt assets shall be considered in determining eligibility.

b) Value of Nonexempt Assets

1) The value of nonexempt assets is the equity value (fair market value less the amount owed), except for licensed vehicles and prepaid funeral agreements valued over $1500.00.

2) The Department considers the following assets in determining eligibility:

A) Liquid Assets

i) Liquid assets are those properties in the form of cash or other financial instruments which are convertible to cash, such as, but not limited to, cash on hand, money, in checking or savings accounts, credit union accounts, savings certificates, stocks or bonds, lump-sum payments, prepaid funeral agreements, IRAs ~~IRA's~~ and Keogh Plans that do not involve a contractual relationship with someone who is not a member of the same food stamp household.

ii) The amount of the Keogh Plan or IRA to be counted as an asset is the total value minus any amount that would be lost for early withdrawal. The amount considered is the amount the individual would receive if the account were closed. An individual (one-person) Keogh Plan is the nonexempt asset. However, the Keogh Plan involving a household member and someone who is not a member of the same food stamp household is exempt unless the client can make withdrawals from the account without affecting the

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

other individual or individuals.

B) Nonliquid Assets

Nonliquid assets are those properties which are not in the form of cash or other financial instruments, such as personal property, licensed vehicles, unlicensed vehicles, buildings, land, recreational properties, and any other property not specifically exempted in Section 121.58.

C) Assets of Sponsors of Aliens

Consider the assets of the sponsor and the sponsor's spouse who sponsored an alien on or after February 1, 1983 (7 CFR 272.1(g)(54)(1984)) in accordance with Section 121.55.

D) Licensed Vehicles

i) The Department shall consider the fair market value of a licensed vehicle in excess of $4650 unless exempted as stated in Section 121.58.

ii) The Department shall consider the equity value of a licensed vehicle unless exempted as stated in Section 121.58.

iii) If both equity value and excess fair market value are considered, the Department shall use the value which is greater.

iv) The Department shall assign fair market values of licensed vehicles determined by the value of those vehicles as listed in the National Automobile Dealers Association (NADA) Used Care Guide (1984). The fair market values shall be updated every six months.

E) Prepaid Funeral Agreements

The value of prepaid funeral agreements over $1500.00 per person is considered.

(Source: Amended at 22 Ill. Reg. 20098, effective NOV 1 1998)

SUBPART D: ELIGIBILITY STANDARDS

Section 121.60 Net Monthly Income Eligibility Standards

a) Eligible households whose net monthly income does not exceed the maximum monthly income standards shall be assigned food stamp benefits based on the net monthly food stamp income.

b) The maximum net monthly income standards are:

Household Size	Amount
1	$ 671 ~~645~~
2	905 ~~864~~
3	1,138 ~~1,082~~
4	1,371 ~~1,300~~
5	1,605 ~~1,519~~

6	1,838	~~1,737~~
7	2,071	~~1,955~~
8	2,305	~~2,174~~
Each additional member	+234	~~+219~~

Derived from Office of Management and Budget non-farm, income poverty guidelines.

(Source: Amended at 22 Ill. Reg. 20099, effective NOV 1 1998)

Section 121.61 Gross Monthly Income Eligibility Standards

a) Gross Monthly Income Eligibility Standards

1) The gross income standards of eligibility shall be 130 percent of the nonfarm income poverty guidelines prescribed by the Office of Management and Budget (see 7 CFR 273.9(a)(1)(1990)). However, categorically eligible households and households containing a member who is elderly, blind or disabled will be exempt from this gross income check (see also 7 CFR 273.9(c) (1990)). To qualify for increased benefits, a household must contain a member who meets one of the following requirements:

A) A member is 60 years of age or older. An individual is considered age 60 in the fiscal month in which he or she becomes 60.

B) A member receives Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act, (this includes the household where the member is receiving SSI income pending a final decision from the Social Security Administration. This SSI income is being provided on a temporary or emergency basis).

C) A member receives Social Security disability or blindness benefits under Title II (RSDI) of the Social Security Act.

D) A member receives State Supplemental Payment (SSP) due to blindness or disability.

E) A veteran with a service-connected disability rated or paid as totally disabled by the Department of Veterans Affairs (VA).

F) A veteran considered by the VA to be in need of regular aid and attendance or permanently housebound.

G) A veteran's surviving spouse who is considered in need of aid and attendance or considered permanently housebound by the VA or a veteran's surviving child who is considered permanently incapable of self-support by the VA.

H) A veteran's surviving spouse or child entitled to compensation for a service-connected death or pension benefits for a nonservice-connected death from the VA, if the spouse or child also has a disability considered permanent under Social Security requirements.

I) A member receives federal, state, or local government disability pension and is considered permanently disabled under Social Security requirements.

J) A member receives Railroad Retirement disability benefits.

K) A member receives an annuity payment from Railroad Retirement and is eligible for Medicare.

L) A member receives disability-related medical assistance benefits (Categories 92, 93 and P3) under Title XIX (Medicaid) of the Social Security Act.

2) For those veterans, surviving spouses, or children mentioned in subsections (a)(1)(F) and (G) of this Section, proof of receipt of VA disability benefits is sufficient verification of disability. For those veterans mentioned in subsection (a)(1)(E) of this Section, a verified statement, in writing, from the VA that the individual is totally disabled must be provided. To verify disability for those individuals mentioned in subsection (a)(1)(H) of this Section, the individual must provide a statement from the Social Security Administration or from a physician of the Medical Practice Act of 1987 [225 ILCS 60], or a licensed or certified psychologist under the Clinical Psychologist Licensing Act [225 ILCS 15] that the individual suffers from one of the disabilities listed in the preamble to Section 221(i) of the Social Security Act (42 U.S.C. 421(i)) or if the disability is obvious, by the observation of the caseworker (for example, permanent loss of use of both hands).

b)

Household Size	Gross Income
One Person	$ 873 ~~839~~
Two Persons	1,176 ~~1,123~~
Three Persons	1,479 ~~1,407~~
Four Persons	1,783 ~~1,690~~
Five Persons	2,086 ~~1,974~~
Six Persons	2,389 ~~2,258~~
Seven Persons	2,693 ~~2,542~~
Eight Persons	2,996 ~~2,826~~
Each Additional Member	+ 304 ~~284~~

(Source: Amended at 22 Ill. Reg. 20099, effective NOV 1 1998)

Section 121.63 Deductions From Monthly Income

a) The deductions described in this Section shall be allowed in the determination of the adjusted net monthly food stamp income.

b) Earned Income Deduction. Eighty percent of total gross earned income is considered. See Sections 121.40 through 121.54 for a description of earned income.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

c) Standard Deduction. The standard deduction is $134.00 per household per month.

d) Dependent Care Deduction

1) The dependent care deduction consists of payments for the care of a child or other dependent when necessary for a household member to accept or continue employment or to seek employment in compliance with the job search criteria (contained in 89 Ill. Adm. Code 112.70 through 112.73) or to attend training or pursue education which is preparatory for employment.

2) The amount of the deduction is to be determined by the actual costs for care and is not to exceed $160.00 per month for each dependent household member.

e) Child Support Deduction. The child support deduction is the amount of legally obligated child support paid by a household member to or for a nonhousehold member.

f) Shelter Costs Deduction

1) The shelter deduction is the amount of shelter costs that exceed 50% of the household's total income after the allowable deductions in subsections (b), (c) and (d) of this Section have been made. The shelter deduction shall not exceed $275.00 ~~$250.00~~.

2) If the household contains a member who is elderly or disabled, as defined at 7 CFR 271.2 (1990) and Section 121.61, there is no limit on the amount of the excess shelter deduction.

3) Households in which all members are homeless, but are not receiving free shelter throughout the month, are entitled to a $143.00 per month homeless shelter costs deduction. Homeless households with shelter costs which exceed the homeless shelter costs deduction are allowed to claim the higher shelter costs, if these costs are verified. Homeless households which receive free housing and utilities throughout the month are not entitled to the homeless shelter costs deduction.

4) Shelter costs include only the following:

A) continuing charges for the shelter occupied by the household (rent, mortgage and other charges leading to the ownership of the shelter, including interest on such charges);

B) property taxes, State and local assessments and insurance on the structure itself; and

C) utility costs, as described in subsection (g~~f~~) of this Section.

5) Shelter costs for a home temporarily unoccupied by the household because of employment or training away from home, illness or abandonment caused by a natural disaster or casualty loss, if~~:~~

A) the household intends to return to the home;

B) the current occupants of the home, if any, are not claiming the shelter costs for food stamp purposes; and

C) the home is not leased or rented during the absence of the household.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

6) Charges for repair of a home which was damaged or destroyed due to a natural disaster. Shelter costs shall not include repair charges which have been or will be reimbursed by private or public relief agencies, insurance companies or any other source.

g) Utility Costs

1) Utility costs include:

A) the cost of heating and cooking fuel, air conditioning, electricity, water, sewerage, garbage and trash collection fees;

B) basic service fee for one telephone (including tax on the basic fee) of $27.00; and

C) fees charged by the utility provider for initial installation.

2) Utility deposits are not considered to be utility costs.

3) Those households that ~~which~~ are billed for heating or air conditioning, or both, must use the air conditioning/heating standard allowance of $211.00. Those households that are not billed for air conditioning or heating but are billed for electricity must use the electricity standard allowance of $147.00 ~~separately from their rent or mortgage may claim the standard utility allowance of $209.00~~. Households living in rental housing who are billed on a regular basis by a landlord for costs for ~~heating or~~ air conditioning, heating, or electricity must use the appropriate standard. ~~or both, may use the standard utility allowance if utility usage is determined through a meter or otherwise is verifiable or if the charge for heating or air conditioning, or both, is separate and identifiable.~~ If the air conditioning/heating standard allowance or the electricity standard ~~utility~~ allowance is used, then no other utility costs may be claimed. If actual utility costs are allowed because the household does not qualify for either standard ~~exceed the standard utility allowance~~, then actual~~,~~ verified costs may be claimed, except that if a separately-billed phone expense is claimed only the basic telephone allowance of $27~~.00~~ per month is allowed. ~~The client may switch between the standard utility allowance and actual utility costs only at recertification.~~

4) A ~~However, during the heating or cooling season,~~ a household that is billed less often than monthly for its costs for heating, ~~or~~ air conditioning, or electricity must ~~both, but is otherwise eligible to use the standard utility allowance, may~~ continue to use the air conditioning/heating standard allowance or electricity standard ~~standard utility~~ allowance, whichever is appropriate, between billing months.

5) Households in public housing or privately-owned rental units that ~~which~~ receive a bill for over-usage are not entitled to use the air conditioning/heating standard allowance or the electricity standard ~~standard utility~~ allowance. When households (as defined

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

at 7 CFR 273.1(a) (1990)) live together, the air conditioning/heating standard allowance or the electricity standard allowance, whichever is appropriate, ~~standard utility allowance~~ shall be divided equally among the households that contribute toward the utility costs whether or not each household participates in the program.

6) Households whose expense for heat or electricity ~~air conditioning~~, or both, is covered by indirect energy assistance payments under the Illinois Home Energy Assistance Program (47 Ill. Adm. Code 100) shall be entitled to the air conditioning/heating standard allowance or the electricity standard allowance, whichever is appropriate ~~standard utility allowance~~ (7 CFR 273.9 and 273.10(d)(6) (1990)). The provisions of subsection (f)(3) of this Section are applicable to households whose expenses for heating or electricity ~~air conditioning~~, or both, are covered by indirect energy assistance payments.

7) Those households that ~~which~~ are not billed separately for either heat, ~~or~~ air conditioning, or electricity are not entitled to claim either the air conditioning/heating standard ~~utility~~ allowance or the electricity standard allowance but may claim the actual utility amounts for which they are billed separately, subject to the $27.00 per month limitation for telephone expense.

h) Excess Medical Deduction. A deduction for excess medical expenses shall be allowed for households which contain an elderly or disabled member as defined at 7 CFR 271.2 (1990) and Section 121.61. The medical expenses incurred by the qualifying household member which are over $35 will be deducted, if the expenses will not be reimbursed by insurance or a third party.

(Source: Amended at 22 Ill. Reg. 20099, effective NOV 1 1998)

Section 121.64 Food Stamp Benefit Amount

a) The monthly food stamp benefit amount is determined by subtracting 30% of the adjusted net monthly income from the maximum monthly food stamp benefit amount.

b) Maximum Monthly Food Stamp Benefit Amount:

Household size	
1	$125 ~~120~~
2	$230 ~~220~~
3	$329 ~~315~~
4	$419 ~~400~~
5	$497 ~~475~~
6	$597 ~~570~~

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

7	$659 ~~630~~
8	$754 ~~720~~
Each Additional Member	+ $94 ~~90~~

c) All one and two-person households will receive a minimum monthly food stamp benefit amount of $10.00

d) September Food Stamp Benefit Amount Adjustment
The annual revisions of maximum gross and net income standards, standard deduction, maximum excess shelter deduction and food stamp benefit amounts are effective October 1st of each year. Because the September fiscal month of certain households includes days which fall in the October calendar month, the portion of the September fiscal food stamp benefit amount covering October 1st and later must be increased to reflect the new standards.

(Source: Amended at 22 Ill. Reg. 20099, effective NOV 1 1998)

SUBPART F: MISCELLANEOUS PROGRAM PROVISIONS

Section 121.120 Recertification of Eligibility

a) A recertification of food stamp eligibility and basis of issuance for an assistance household is to be made at each redetermination of the assistance case. However, a recertification is not required at a semi-annual redetermination.

b) A review of food stamp eligibility and basis of issuance for non-assistance household shall be made prior to the end of each certification period in which they are receiving food stamp benefits.

c) Recertification involves the completion of an application or Request, an interview, a review of eligibility and cooperation in the verification of eligibility. The local office shall provide the household with an opportunity to participate in its normal issuance cycle.

d) In order to receive uninterrupted benefits, the household must:
   1) file a timely application or Request for recertification;
      A) households certified for more than two months must file an application by the 15th calendar day of the last month of the certification period.
      B) households certified for one or two months must file an application within 17 calendar days from the date of Notice of Eligibility/Expiration of Certification.
   2) appear for the interview that is scheduled after the application is timely filed; and
   3) provide all requested verifications within ten calendar days after ~~of~~ the date the verification was requested.

e) The household is responsible for requesting another interview if it fails to appear for the interview that was scheduled after the

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENTS

application was filed.

f) The application of a food stamp unit who files a request for recertification but fails to appear for a scheduled interview or provide requested verifications within ten calendar days is denied.

1) If a food stamp unit requests an interview or provides requested verification within 30 days from the date of its recertification application, the application must be reopened.

2) If the unit is found eligible, the local office must provide the unit benefits within 30 calendar days from the date of application or 10 calendar days from the date the interview is completed or the verification is provided, whichever is later. A food stamp unit shall not receive benefits for a subsequent approval period before the end of its current approval period.

g)~~f~~) Amount of food stamp benefits

1) Except as provided in subsection (g~~f~~)(2) of this Section, households that file the application for recertification after the last day of the previous certification period, shall have benefits prorated from the date that the application was filed. Households that are certified for one or two months will not have benefits prorated if the application is filed within 17 calendar days of the date of Notice of Eligibility/Expiration of Certification.

2) Migrant and seasonal farmworker households shall receive a full allotment for the month of application if the household participated in the Food Stamp Program within 30 days prior to the date of application.

h)~~g~~) If a recertification application is pending and uninterrupted benefits cannot be provided due to the ten day verification standard, then the local office must provide benefits within five working days after the date the household provides the verification.

(Source: Amended at 22 Ill. Reg. 20099, effective NOV 1 1998)

DEPARTMENT OF INSURANCE

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Individual and Group Life Insurance Policy Illustrations

2) Code Citation: 50 Ill. Adm. Code 1406

3)

Section Number:	Adopted Action:
1406.50	Amended
1406.90	Amended
1406.100	Amended

4) Statutory Authority: Implementing Sections 224 and 230.1 of the Illinois Insurance Code [215 ILCS 5/224 and 230.1] and authorized by Section 401 of the Illinois Insurance Code [215 ILCS 5/401].

5) Effective Date of Amendments: November 9, 1998

6) Does this amendment contain an automatic repeal date? No

7) Does this amendment contain incorporations by reference? No

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the Department of Insurance's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register:
July 10, 1998, 22 Ill. Reg. 11685

10) Has JCAR issued a Statement of Objections to this Amendment? No

11) Difference(s) between proposal and final version: No substantive changes were made.

12) Have all changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No agreements or changes were made.

13) Will this amendment replace an emergency rule currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of rulemaking: Part 1406 is being amended to make a couple of technical corrections that were discovered following adoption. In Section 1406.50(d), "substantially similar to the following" will be deleted and "The following statements" will be added in lieu thereof. In addition, several words were inadvertently left out of Section 1406.50(d)(2) and are now being added. Finally, these amendments will also correct two cross references that were incorrectly cited in Section 1406.90(c) and 1406.100(f)(2).

DEPARTMENT OF INSURANCE

NOTICE OF ADOPTED AMENDMENTS

16) Information and questions regarding this adopted amendment shall be directed to:

Betty Jo Teer
Department of Insurance
320 West Washington
Springfield, Illinois 62767-0001
(217) 785-7349

The full text of the Adopted Amendments begins on the next page.

DEPARTMENT OF INSURANCE

NOTICE OF ADOPTED AMENDMENTS

TITLE 50: INSURANCE
CHAPTER I: DEPARTMENT OF INSURANCE
SUBCHAPTER s: LEGAL RESERVE LIFE INSURANCE

PART 1406
INDIVIDUAL AND GROUP LIFE INSURANCE POLICY ILLUSTRATIONS

Section
1406.10 Purpose
1406.20 Applicability and Scope
1406.30 Definitions
1406.40 Policies to Be Illustrated
1406.50 Standards for Basic Illustrations
1406.60 Standards for Supplemental Illustrations
1406.70 General Rules and Prohibitions
1406.80 Delivery of Illustrations and Record Retention
1406.90 Annual Report-Notice to Policy owners
1406.100 Annual Certifications
1406.110 Penalties

AUTHORITY: Implementing Sections 224 and 230.1 of the Illinois Insurance Code [215 ILCS 5/224 and 230.1] and authorized by Section 401 of the Illinois Insurance Code [215 ILCS 5/401].

SOURCE: Adopted at 22 Ill. Reg. 3038, effective June 1, 1998; amended at 22 Ill. Reg. 20121, effective NOV 9 1998.

Section 1406.50 Standards for Basic Illustrations

a) Format. A basic illustration shall conform with the following requirements:
   1) The illustration shall be labeled with the date on which it was prepared.
   2) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration (e.g., the fourth page of a seven-page illustration shall be labeled "page 4 of 7 pages").
   3) The assumed dates of payment receipt and benefit pay-out within a policy year shall be clearly identified.
   4) If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the policy is assumed to have been in force.
   5) The assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be

DEPARTMENT OF INSURANCE

NOTICE OF ADOPTED AMENDMENTS

identified as premium outlay.

6) Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed.

7) If the illustration shows any non-guaranteed elements, they cannot be based on a scale more favorable to the policy owner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled non-guaranteed.

8) The guaranteed elements, if any, shall be shown before corresponding non-guaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements (e.g., "see page one for guaranteed elements").

9) The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender.

10) The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans and policy loan interest, as applicable.

11) Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form.

12) Any illustration of non-guaranteed elements shall be accompanied by a statement indicating that:
   A) The benefits and values are not guaranteed;
   B) The assumptions on which they are based are subject to change by the insurer; and
   C) Actual results may be more or less favorable.

13) If the illustration shows that the premium payer may have the option to allow policy charges to be paid using non-guaranteed values, the illustration must clearly disclose that a charge continues to be required and that, depending on actual results, the premium payer may need to continue or resume premium outlays. Similar disclosure shall be made for premium outlay of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay display shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up.

14) If the applicant plans to use dividends or policy values, guaranteed or non-guaranteed, to pay all or a portion of the contract premium or policy charges, or for any other purpose, the illustration may reflect those plans and the impact on future policy benefits and values.

b) Narrative Summary. A basic illustration shall include the following:

1) A brief description of the policy being illustrated, including a

DEPARTMENT OF INSURANCE

NOTICE OF ADOPTED AMENDMENTS

statement that it is either an individual or group life insurance policy;

2) A brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that must be paid to guarantee coverage for the term of the contract, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code;

3) A brief description of any policy features, riders or options, guaranteed or non-guaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy;

4) Identification and a brief definition of column headings and key terms used in the illustration; and

5) A statement containing in substance the following: "This illustration assumes that the currently illustrated non-guaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."

c) Numeric Summary.

1) Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable. For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium. This summary shall be shown for at least policy years 5, 10 and 20 and at age 70, if applicable, on the three bases shown below. For multiple life policies the summary shall show policy years 5, 10, 20 and 30.
   A) Policy guarantees;
   B) Insurer's illustrated scale;
   C) Insurer's illustrated scale used but with the non-guaranteed elements reduced as follows:
      i) Dividends at 50% of the dividends contained in the illustrated scale used;
      ii) Non-guaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used;
      iii) All non-guaranteed charges, including but not limited to term insurance charges, mortality and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.

2) In addition, if coverage would cease prior to policy maturity or age 100, the year in which coverage ceases shall be identified for each of the 3 bases.

d) Statements. The following statements ~~Statements substantially similar~~

DEPARTMENT OF INSURANCE

NOTICE OF ADOPTED AMENDMENTS

~~to--the--following~~ shall be included on the same page as the numeric summary and signed by the applicant, or the policy owner in the case of an illustration provided at time of delivery, as required by this Part.

1) A statement to be signed and dated by the applicant or policy owner reading as follows: "I have received a copy of this illustration and understand that this illustration assumes that the current illustrated non-guaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."

2) A statement to be signed and dated by the insurance producer or other authorized representative of the insurer reading as follows: "I have informed the applicant or policy owner that this illustration assumes that the currently illustrated non-guaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."

e) Tabular Detail.

1) A basic illustration shall include the following for at least each policy year from 1 to 10 and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and except for term insurance beyond the 20th year for any year in which the premium outlay and contract premium, if applicable, is to change.

A) The premium outlay and mode the applicant plans to pay and the contract premium, as applicable;

B) The corresponding guaranteed death benefit, as provided in the policy; and

C) The corresponding guaranteed value available upon surrender, as provided in the policy.

2) For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium.

3) Non-guaranteed elements may be shown if described in the contract. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends. If any non-guaranteed elements are shown they must be shown at the same durations as the corresponding guaranteed elements, if any. If no guaranteed benefit or value is available at any duration for which a non-guaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column.

(Source: Amended at 22 Ill. Reg. 20121, effective NOV 9 1998)

Section 1406.90 Annual Report - Notice to Policy owners

DEPARTMENT OF INSURANCE

NOTICE OF ADOPTED AMENDMENTS

a) In the case of a policy designated as one for which illustrations will be used, the insurer shall provide each policy owner with an annual report on the status of the policy that shall contain at least the following information:

1) For universal life policies, the report shall include the following:

A) The beginning and end date of the current report period;

B) The policy value at the end of the previous report period and at the end of the current report period;

C) The total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense and riders);

D) The current death benefit at the end of the current report period on each life covered by the policy;

E) The net cash surrender value of the policy as of the end of the current report period;

F) The amount of outstanding loans, if any, as of the end of the current report period; and

G) Either:

i) For fixed premium policies, if, assuming guaranteed interest, mortality and expense loads and continued scheduled premium payments, the policy's net cash surrender value is such that it would not maintain insurance in force until the end of the next reporting period, a notice to this effect shall be included in the report; or

ii) For flexible premium policies, if, assuming guaranteed interest, mortality and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect shall be included in the report.

2) For all other policies, where applicable:

A) Current death benefit;

B) Annual contract premium;

C) Current cash surrender value;

D) Current dividend;

E) Application of current dividend; and

F) Amount of outstanding loan.

3) Insurers writing life insurance policies that do not build nonforfeiture values shall only be required to provide an annual report with respect to these policies for those years when a change has been made to non-guaranteed policy elements by the insurer.

b) If the annual report does not include an in force illustration, it shall contain the following notice displayed prominently: "**IMPORTANT POLICY OWNER NOTICE:** You should consider requesting more detailed

DEPARTMENT OF INSURANCE

NOTICE OF ADOPTED AMENDMENTS

information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by calling [insurer's phone number], writing to [insurer's name] at [insurer's address] or contacting your insurance producer. If you do not receive a current illustration of your policy within 30 days from your request, you should contact the Department of Insurance." The insurer may vary the sequential order of the methods for obtaining an in force illustration.

c) Upon the request of the policy owner, the insurer shall furnish an in force illustration of current and future benefits and values based on the insurer's present illustrated scale. This illustration shall comply with the requirements of Section 1406.70(a) through (c) and Section 1406.50(a) and (e) of this Part. No signature or other acknowledgement of receipt of this illustration will be required.

d) If an adverse change in non-guaranteed elements that could affect the policy has been made by the insurer since the last annual report, the annual report shall contain a notice of that fact and the nature of the change will be prominently displayed.

(Source: Amended at 22 Ill. Reg. 20121, effective NOV 9 1998)

Section 1406.100 Annual Certifications

a) The Board of Directors of each insurer shall appoint one or more illustration actuaries.

b) The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the Actuarial Standard of Practice No. 24, Compliance with the NAIC Life Insurance Illustrations Model Regulation promulgated by the Actuarial Standards Board (ASB), (1720 I Street, N.W., 7th Floor, Washington, DC 20006), and that the illustrated scales used in insurer-authorized illustrations meet the requirements of this Part.

c) The illustration actuary shall:
   1) Be a member of the American Academy of Actuaries;
   2) Be familiar with the standard of practice regarding life insurance policy illustrations;
   3) Not have been found by the Director, following appropriate notice and hearing, to have:
      A) Violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his or her dealings as an illustration actuary;
      B) Been found guilty of fraudulent or dishonest practices;
      C) Demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary; or
      D) Resigned or been removed as an illustration actuary within

DEPARTMENT OF INSURANCE

NOTICE OF ADOPTED AMENDMENTS

the past 5 years as a result of acts or omissions indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards;

   4) Not fail to notify the Director of any action taken by a commissioner of another state similar to that identified under subsection (c)(3) of this Section;
   5) Disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous 5 years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If non-guaranteed elements illustrated for new policies are not consistent with those illustrated for similar in force policies, this must be disclosed in the annual certification. If non-guaranteed elements illustrated for both new and in force policies are not consistent with the non-guaranteed elements actually being paid, charged or credited to the same or similar forms, this must be disclosed in the annual certification; and
   6) Disclose in the annual certification the method used to allocate overhead expenses for all illustrations:
      A) Fully allocated expenses;
      B) Marginal expenses; or
      C) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the National Association of Insurance Commissioners or by the Director.

d) The illustration actuary shall:
   1) File a certification with the insurer's Board of Directors:
      A) Annually for all policy forms for which illustrations are used; and
      B) Before a new policy form is illustrated.
   2) If an error in a previous certification is discovered, the illustration actuary shall notify the insurer's Board of Directors promptly.

e) If an illustration actuary is unable to certify the scale for any policy form illustration the insurer intends to use, the actuary shall notify the Board of Directors of the insurer promptly of his or her inability to certify.

f) An annual certification shall be filed with the Director by the insurer by no later than December 31 of each year for the 12 months immediately preceding the certification date itself. For the initial 1998 filing, the insurer shall provide a certification for the calendar months which follow the effective date of this Part. The insurer shall submit the actuarial certification as required by subsection (d) of this Section to the Life, Accident/Health Compliance Unit of the Illinois Department of Insurance. A responsible officer of the insurer, other than the illustration actuary, shall certify:

DEPARTMENT OF INSURANCE

NOTICE OF ADOPTED AMENDMENTS

1) That the illustration formats meet the requirements of this Part and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary; and
2) That the insurer has provided its insurance producers with information about the expense allocation method used by the insurer in its illustrations and disclosed as required by subsection (c)(6) ~~(b)(3)~~ of this Section.

g) If an insurer changes the illustration actuary responsible for all or a portion of the insurer's policy forms, the insurer shall notify the Director of that fact promptly and disclose the reason for the change.

(Source: Amended at 22 Ill. Reg. 20121, effective NOV 9 1998)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Special Program Performance Standards--Operations on Prime Farmland

2) Code Citation: 62 Ill. Adm. Code 1823

3)

Section Number:	Adopted Action:
1823.1	Amend
1823.11	Amend
1823.12	Amend
1823.14	Amend

4) Statutory Authority: Implemented and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720]

5) Effective Date of Amendments: November 5, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this amendment contain incorporations by reference? No

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal published in Illinois Register: 22 Ill. Reg. 5323 (March 20, 1998)

10) Has JCAR issued a Statement of Objection to these rules? No

11) Difference(s) between proposal and final version:

a) In the Table of Contents, Section 1823.11, "Special Requirements" has been stricken and replaced with "Applicability".

b) In Section 1823.14(a)(2), "Section 1823.14" has been stricken and replaced with "Subsections" and "Soil Conservation Service" has been changed to "Natural Resources Conservation Service"; in subsection (d), "paragraph" has been changed to "subsection"; in subsection (g), "Soil Conservation Service" has been changed to "Natural Resources Conservation Service".

c) All numbering has been simplified.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this amendment replace an emergency rule currently in effect? No

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

14) Are there any amendments pending of this Part? No

15) Summary and Purpose of Amendment:

The Illinois Department of Natural Resources, Office of Mines and Minerals (Department), was notified by the federal Office of Surface Mining (OSM) on October 30, 1997 that Sections 1823.1 and 1823.11 were less effective than their federal counterparts as required by the federal Surface Mining Control and Reclamation Act. In accordance with 30 CFR 732.17(f)(1), the Department was instructed to provide program amendments to correct its defective regulations. In order to be no less effective than its federal counterpart, Section 1823.1 has been amended to ensure that all prime farmland affected by surface mining operations is reclaimed to prime farmland and to delete the blanket exemption for underground mines.

Section 1823.11 is amended to ensure that all prime farmland affected by surface mining operations is reclaimed to prime farmland and to provide an exemption mechanism for underground mines.

The Department was advised on June 17, 1997 that the counterpart federal regulations to Sections 1823.12 and 1823.14 were changed. The State regulations have been revised to be as effective as the federal regulations.

Section 1823.14(g) has been corrected to change the Soil Conservation Service to the Natural Resources Conservation Service.

16) Information and questions regarding this adopted amendment shall be directed to:

Karen Jacobs, Legal Counsel
Department of Natural Resources
524 South Second Street
Springfield, IL 62701
(217)782-1809

The full text of the Adopted Amendments begins on the next page:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES
~~MINES AND MINERALS~~

PART 1823
SPECIAL PROGRAM PERFORMANCE STANDARDS--
OPERATIONS ON PRIME FARMLAND

Section
1823.1 Scope
1823.2 Objective
1823.11 Prime Farmland: Applicability ~~Special Requirements~~
1823.12 Prime Farmland: Soil Removal
1823.13 Prime Farmland: Soil Stockpiling
1823.14 Prime Farmland: Soil Replacement
1823.15 Prime Farmland: Revegetation

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; emergency amendment at 6 Ill. Reg. 8502, effective July 1, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 9987, effective September 3, 1982; codified at 8 Ill. Reg. 9361; amended at 10 Ill. Reg. 9631, effective July 1, 1986; amended at 16 Ill. Reg. 17289, effective January 1, 1992; amended at 22 Ill. Reg. 20131, effective NOV 5 1998.

Section 1823.1 Scope

This Part sets forth special environmental protection performance, reclamation, and design standards for surface coal mining and reclamation operations on prime farmland. ~~, except this Part does not apply to any underground mining operations or activities, nor, except as expressly indicated or required by the Department in a permit, to the surface facilities and activities of surface mining that do not involve drilling, blasting, or mining.~~

(Source: ~~Amended~~ at 22 Ill. Reg. 20131, effective NOV 5 1998)

Section 1823.11 Prime Farmland: Applicability ~~Special Requirements~~

The requirements of this Section shall not apply to: ~~Surface coal mining and reclamation operations conducted on prime farmland shall meet the following requirements:~~

a) Coal preparation plants, support facilities, and roads of underground mines that are actively used over extended periods of time and where uses affect minimal amount of land. Such uses shall meet the requirements of 62 Ill. Adm. Code 1817 for underground mining

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

activities. ~~A permit shall be obtained for those operations under 62 Ill. Adm. Code 1785.17; and~~

b) Disposal areas containing coal mine waste resulting from underground mines that is not technologically and economically feasible to store in underground mines or on non-prime farmland. The operator shall minimize the area of prime farmland used for such purposes. ~~Soil materials to be used in the reconstruction of the prime farmland soil shall be removed before drilling, blasting, or mining, in accordance with Section 1823.12 and in a manner that prevents mixing or contaminating these materials with undesirable material. Where removal of soil materials results in erosion that may cause air and water pollution, the Department shall specify methods to control erosion of exposed overburden.~~

c) Prime farmland that has been excluded in accordance with 62 Ill. Adm. Code 1785.17(a).

(Source: Amended at 22 Ill. Reg. 20131, effective NOV 5 1998)

Section 1823.12 Prime Farmland: Soil Removal

a) Surface coal mining and reclamation operations on prime farmland shall be conducted to:
   1) Separately remove the entire A horizon or other suitable soil materials which will create a final soil having an equal or greater productive capacity than that which existed prior to mining;
   2) Separately remove, or assure proper placement during mining, the B horizon of the soil, a combination of B horizon and underlying C horizon, or other suitable soil material that will create a reconstructed soil of equal or greater productive capacity than which existed before mining; and
   3) Separately remove, the underlying C horizons, other strata, or a combination of horizons or other strata, to be used instead of the B horizon. When replaced, these combinations shall be equal to or more favorable for plant growth than the B horizon.

b) The minimum depth of soil and soil material to be removed for use in reconstruction of prime farmland soils shall be sufficient to meet the soil replacement requirements of Section 1823.14(a).

c) The B and/or C horizons may be left in place for surface disturbance areas if the Department determines the soil capability can be retained.

(Source: Amended at 22 Ill. Reg. 20131, effective NOV 5 1998)

Section 1823.14 Prime Farmland: Soil Replacement

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

Surface coal mining and reclamation operations on prime farmland shall be conducted according to the following:

a) Requirements
   1) The minimum depth of soil and soil material to be reconstructed for prime farmland shall be ~~forty-eight (~~ 48~~)~~ inches except where a natural rock formation occurs at shallower depths. The Department shall specify a depth greater than ~~forty-eight (~~ 48~~)~~ inches wherever necessary to restore productive capacity due to uniquely favorable soil horizons at greater depths; and
   2) Subsections ~~Section 1823.14~~ (a)(1) and (d) shall not apply to prime farmland fragipan soils. Prime farmland fragipan soil shall be reconstructed in accordance with 62 Ill. Adm. Code 1825.14(a)(1), (a)(2), (a)(3), and (a)(5). For the purposes of this provision, prime farmland fragipan soils are specific soils classified as prime farmland that are underlain with a diagnostic subsurface horizon designated as a fragipan by the Soil Conservation Service of the U.S. Department of Agriculture according to the criteria set in Soil Taxonomy, U.S.D.A. Handbook AH 436, including the following soils found in Illinois: Ava, Grantsburg, and Hosmer series as defined by the Soil Interpretation Sheets of the Natural Resources ~~Soil~~ Conservation Service;~~.~~

b) Replace soil material only on land which has been first returned to final grade and scarified according to 62 Ill. Adm. Code 1816.101 through 1816.105 or 62 Ill. Adm. Code 1817.101 through 1817.105, unless site-specific evidence is provided and approved by the Department showing that scarification will not enhance the capability of the recommended soil to achieve equivalent or higher levels of yield;

c) Replace the soil horizons or other suitable soil material in a manner that avoids excessive compaction;

d) Replace the B horizon or other suitable material specified in Section 1823.12(a)(2) and (a)(3) to the thickness needed to meet the requirements of subsection ~~paragraph~~ (a) of this Section;

e) Replace the A horizon or other suitable soil materials specified in Section 1823.12(a)(1) as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original soil, as determined in 62 Ill. Adm. Code 1785.17(b)(1)(B) and be replaced in a manner that protects the surface layer from wind and water erosion before it is seeded or planted;

f) Apply nutrients and soil amendments as needed to quickly establish vegetative growth;

g) Prime farmland shall have a planned erosion control system if expected soil loss from row crop production will exceed the tolerable soil loss limits as defined by "Resource Conservation Planning Technical Material-IL-4" (May 12, 1977). "Resource Conservation Planning Technical Material-IL-4", issued by the U.S. Department of Agriculture, Natural Resources ~~Soil~~ Conservation Service, located at

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1902 Fox Drive, Champaign, Illinois 61820, is hereby incorporated by reference and does not include later editions or amendments. Terrace systems, when utilized as part of a planned erosion control system, shall be constructed according to U.S. Department of Agriculture, Natural Resources ~~Soil~~ Conservation Service specifications. Erosion control plans in compliance with this subsection shall be submitted to and approved by the Department after final grading based on seasonal factors, the extent of the area, and the sophistication of the erosion control plan.

(Source: Amended at 22 Ill. Reg. 20131, effective NOV 5 1998)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: State Processes For Designating Areas Unsuitable for Surface Coal Mining Operations

2) Code Citation: 62 Ill. Adm. Code 1764

3)

Section Number:	Adopted Action:
1764.13	Amend
1764.15	Amend

4) Statutory Authority: Implemented and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720]

5) Effective Date of Amendments: November 5, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this amendment contain incorporation by reference? No

8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal published in Illinois Register: 22 Ill. Reg. 5329 (March 20, 1998)

10) Has JCAR issued a Statement of Objection to these rules? No

11) Difference(s) between proposal and final version:

a) In the Source note, "11031" has been changed to "11114".

b) In Section 1764.13(b)(1)(E), the Ill. Rev. Stat. cite has been changed to "[225 ILCS 720/7.02(a) and (b)]"

c) In Section 1764.15(a), "Processing of Petitions" has been added; in subsection (a)(1), "of" has been changed to "after"; in subsection (c), "Land Report and Public Comment" has been added; in subsection (c)(1), "After the petition is determined to be complete" has been underlined.

d) All numbering has been simplified.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this amendment replace an emergency rule currently in effect? No

14) Are there any amendments pending of this Part? No

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

15) Summary and Purpose of Amendment:

Section 1764.13(a) has been corrected to reflect the merging of the Department of Mines and Minerals into the Department of Natural Resources.

Sections 1764.15(c)(1), (2) and (3) have been amended to reflect changes that were made to the Surface Coal Mining Land Conservation and Reclamation Act to implement the merging of the Department of Energy and Natural Resources and the Department of Mines and Minerals into the Department of Natural Resources.

16) Information and questions regarding this adopted amendment shall be directed to:

Karen Jacobs, Legal Counsel
Department of Natural Resources
524 South Second Street
Springfield, IL 62701
(217)782-1809

The full text of the Adopted Amendments begins on the next page:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES ~~MINES AND MINERALS~~

PART 1764
STATE PROCESSES FOR DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

Section
1764.11 General Process Requirements
1764.13 Petitions
1764.15 Initial Processing, Recordkeeping, and Notification Requirements
1764.17 Hearing Requirements
1764.19 Decision
1764.21 Data Base and Inventory System Requirements
1764.23 Public Information
1764.25 Regulatory Authority Responsibility for Implementation

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 8510; amended at 11 Ill. Reg. 8567, effective July 1, 1987; amended at 17 Ill. Reg. 11114, effective July 1, 1993; amended at 22 Ill. Reg. 20137, effective NOV 5 1998.

Section 1764.13 Petitions

a) Right to petition. Any person having an interest which is or may be adversely affected has the right to petition the Illinois Department of Natural Resources ~~Mines and Minerals~~ (Department) to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated. For the purpose of this action, a person having an interest which is or may be adversely affected must demonstrate how he or she meets an "injury in fact" test by describing the injury to his or her specific affected interests and demonstrate how he or she is among the injured.

b) Designation. The Department shall determine what information must be provided by the petitioner to have an area designated as unsuitable for surface coal mining operations.

1) At a minimum, a complete petition for designation shall include:

A) The petitioner's name, address, telephone number, and notarized signature;

B) Identification of the petitioned area, including its location and size, and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area;

C) An identification of the petitioner's interest which is or may be adversely affected by surface coal mining operations,

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

including a statement demonstrating how the petitioner satisfies the requirements of subsection (a);

D) A description of how mining of the area has affected or may adversely affect people, land, air, water or other resources, including the petitioner's interests; and

E) Allegations of fact and supporting evidence, covering all lands in the petition area, which tend to establish that the area is unsuitable for all or certain types of surface coal mining operations, pursuant to specific criteria of Sections 7.02(a) and (b) of the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720/7.02(a) and (b)] ~~[Ill. Rev. Stat. 1985, ch. 96 1/2, para. 7907.02(a) and (b)]~~ (State Act), assuming that contemporary mining practices required under applicable regulatory programs would be followed if the area were to be mined. Each of the allegations of fact should be specific as to the mining operation, if known, and the portion(s) of the petitioned area and petitioner's interests to which the allegation applies and be supported by evidence that tends to establish the validity of the allegations for the mining operation or portion of the petitioned areas.

2) The Department may request that the petitioner provide other supplementary information which is readily available.

c) Termination. The Department shall determine what information must be provided by the petitioner to terminate designations of lands as unsuitable for surface coal mining operations.

1) At a minimum, a complete petition for termination shall include:

A) The petitioner's name, address, telephone number, and notarized signature;

B) Identification of the petitioned area, including its location and size and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area to which the termination petition applies;

C) An identification of the petitioner's interest which is or may be adversely affected by the designation that the area is unsuitable for surface coal mining operations including a statement demonstrating how the petitioner satisfied the requirements of subsection (a);

D) Allegations of facts covering all lands for which the termination is proposed. Each of the allegations of fact shall be specific as to the mining operation, if any, and to portions of the petitioned area and petitioner's interests to which the allegation applies. The allegations shall be supported by evidence, not contained in the record of the designation proceeding, that tends to establish the validity of the allegations for the mining operation or portion of the petitioned area, assuming that contemporary mining practices required under applicable regulatory programs

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

would be followed were the area to be mined. For areas previously and unsuccessfully proposed for termination, significant new allegations of facts and supporting evidence must be presented in the petition. Allegations and supporting evidence should also be specific to the basis for which the designation was made and tend to establish that the designation should be terminated on the following bases:

i) Nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in 62 Ill. Adm. Code 1762.11(b);

ii) Reclamation now being technologically and economically feasible if the designation was based on the criteria found in 62 Ill. Adm. Code 1762.11(a); or

iii) Resources or conditions not being affected by surface coal mining operations, or in the case of land use plans, not being incompatible with surface coal mining operations during and after mining, if the designation was based on the criteria found in 62 Ill. Adm. Code 1762.11(b).

2) The Department may request that the petitioner provide other supplementary information which is readily available.

(Source: Amended at 22 Ill. Reg. 20137, effective NOV 5 1998)

Section 1764.15 Initial Processing, Recordkeeping, and Notification Requirements

a) Processing of Petitions

1) Within ~~sixty (~~ 60~~)~~ days after ~~of~~ receipt of a petition, the Department shall notify the petitioner by certified mail whether or not the petition is complete under Section 1764.13(b) or (c). Complete, for a designation or termination petition, means that the information required under Section 1764.13(b) or (c) has been provided.

2) The Department shall determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the Department finds there are not any identified coal resources in that area, it shall return the petition to the petitioner with a statement of the findings.

3) If the Department determines that the petition is incomplete, frivolous, or that the petitioner does not meet the requirements of Section 1764.13(a), it shall return the petition to the petitioner with a written statement of the reasons for the determination and the categories of information needed to make the petition complete. A frivolous petition is one in which the

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

allegations of harm lack serious merit.

4) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the Department shall determine if the new petition presents significant new allegations of facts with evidence which tends to establish the allegations. If the petition does not contain such material, the Department shall not consider the petition and shall return the petition to the petitioner, with a statement of its findings and a reference to the record of the previous designation proceedings where the facts were considered.

5) The Department shall notify the person who submits a petition of any application for a permit received which includes any area covered by the petition.

6) The Department shall not process any petition received insofar as it pertains to lands for which an administratively complete permit application has been filed and the first newspaper notice has been published. Based on such a determination, the Department may issue a decision on a complete and accurate permit application and shall inform the petitioner why the Department cannot consider the part of the petition pertaining to the proposed permit area.

b) Promptly after a petition is received, the Department shall notify the general public of the receipt of the petition by a newspaper advertisement placed in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area and in any official State register of public notices. The Department shall make copies of the petition available to the public and shall provide copies of the petition to other interested governmental agencies, intervernors, persons with an ownership interest of record in the property, and other persons known to the Department to have an interest in the property.

c) Land Report and Public Comment

1) After the petition is determined to be complete the Departmen shall prepare a Land Report. ~~Within ten (10) days after a petition is determined to be complete, the Department shall refer it to the Department of Energy and Natural Resources for ensuring the preparation of a Land Report.~~ Each Land Report shall evaluate whether mining operations on the land which is subject to the petition would have any or all of the effects described in 62 Ill. Adm. Code 1762.11. Each Land Report shall contain a detailed statement on:

A) The potential resources of the area,

B) The demand for coal resources, and

C) The impact of a designation of such lands as unsuitable for mining on the environment, the economy, and the supply of coal.

2) The Land Report shall state objectively the information which the Department ~~of Energy and Natural Resources~~ has, but shall not

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

contain a recommendation with respect to whether the petition should be granted or denied. Each Land Report shall be completed ~~and filed with the Department by the date agreed on by the Department and the Department of Energy and Natural Resources,~~ but not later than eight ~~(8)~~ months after the petitioner has been notified the petition is complete under subsection (a)(1) ~~receipt by the Department of Energy and Natural Resources of a request from the Department. The Department of Energy and Natural Resources shall be free to contract for all or any portion of a Land Report subject to approval of the Department.~~

3) The Department ~~of Energy and Natural Resources~~ shall print ~~one hundred (100)~~ copies of each Land Report, which shall be distributed as follows: One ~~(1)~~ copy to each petitioner; one ~~(1)~~ copy to the operator or operators; two ~~(2)~~ copies to the County Clerks of the counties included in the petition, one ~~(1)~~ of which is to be forwarded to the county commission or board of supervisors; one ~~(1)~~ copy to the Office of Surface Mining Reclamation and Enforcement, and one ~~(1)~~ copy to each office of the Land Reclamation Division ~~Department~~ for public use. Remaining copies may be provided to persons who have filed requests in the proceeding for a copy of the report.

4) Within three ~~(3)~~ weeks after the determination that a petition is complete, the Department shall request submissions from the general public of relevant information, by a newspaper advertisement placed once ~~(1)~~ a week for two ~~(2)~~ consecutive weeks in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area, and in any official State register of public notices.

d) Until three ~~(3)~~ days before the Department holds a hearing under Section 1764.17, any person may intervene in the proceeding by filing allegations of facts, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address, and telephone number.

e) Beginning immediately after a complete petition is filed, the Department shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the Department. The Department shall make the record available for public inspection, free of charge, during all normal business hours at a central location of the county or multi-county area in which the land petitioned is located, and make available for copying at reasonable cost at the Department's main and regional offices.

(Source: Amended at 22 Ill. Reg. 20137, effective NOV 5 1998)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Administrative and Judicial Review

2) Code Citation: 62 Ill. Adm. Code 1847

3)

Section Number:	Adopted Action:
1847.3	Amend
1847.9	Amend

4) Statutory Authority: Implemented and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720]

5) Effective Date of Amendments: November 5, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this amendment contain incorporations by reference? No

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal published in Illinois Register: 22 Ill. Reg. 5183 (March 20, 1998)

10) Has JCAR issued a Statement of Objection to these rules? No

11) Difference(s) between proposal and final version:

a) In the Source note, "amended at 20 Ill. Reg. 1919, effective January 19, 1996;" has been added after "1993;".

b) In Section 1847.3(d), "30 days of" has been changed to "30 days after"; in subsection (g)(1), "--" has been changed to ":"; in subsection (i), "fifteen (15)" has been changed to "ten"; in subsection (l), "(735 ILCS 5/3)" has been changed to "[735 ILCS 5/Art. III]"; in subsection (l)(2), "U.S.C." has been changed to "USC"; in subsection (l)(3), "(l)" has been added after the word "subsection".

c) In Section 1847.9(g), "by a preponderance of evidence" has been added after the word "proving" and "was clearly erroneous" has been stricken and replaced with "is in error"; in subsection (k), a comma has been added after the words "hearing officer shall" and "a response thereto"; in subsection (l), "[735 ILCS 5/3]" has been changed to "[735 ILCS 5/Art. III]".

d) All numbering has been simplified.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this amendment replace an emergency rule currently in effect? No

14) Are there any amendments pending of this Part? No

15) Summary and Purpose of Amendment:

Section 1825.11 has been revised to require that crop testing on high capability land be initiated under the same time frame requirements as prime farmland, due to their similarities. In addition, changes have been made to reflect agency name changes.

16) Information and questions regarding this adopted amendment shall be directed to:

Karen Jacobs, Legal Counsel
Department of Natural Resources
524 South Second Street
Springfield, IL 62701
(217)782-1809

The full text of the Adopted Amendments begins on the next page:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1847
ADMINISTRATIVE AND JUDICIAL REVIEW

Section
1847.1 Scope
1847.2 Construction
1847.3 Hearings
1847.4 Citation Hearings
1847.5 Civil Penalty Assessment Hearings
1847.6 Show Cause Hearings
1847.7 Bond Forfeiture Hearings
1847.8 Individual Civil Penalty Hearings
1847.9 Bond Release Hearings

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 17 Ill. Reg. 10887, effective July 1, 1993; amended at 20 Ill. Reg. 1919, effective January 19, 1996; amended at 22 Ill. Reg. ~~20144~~ 20144, effective ~~NOV 5 1998~~.

Section 1847.3 Hearings

a) Within ~~thirty--(~~ 30~~)~~ days after an applicant is mailed written notice of the Department's final decision concerning an application for approval of exploration required under 62 Ill. Adm. Code 1772, a permit for surface coal mining and reclamation operations, a permit revision, a permit renewal, a permit rescission or a transfer, assignment, or sale of permit rights, the applicant, or any person with an interest which is or may be adversely affected, may file a written request for a hearing to contest the decision. The procedures outlined in this Section apply to conflict of interest hearings requested under 62 Ill. Adm. Code 1705.21, review of valid existing right determinations under 62 Ill. Adm. Code 1761.12(g), review of exemption determinations under 62 Ill. Adm. Code 1702.11(f) and 1702.17(c)(2), formal review of decisions not to inspect or enforce under 62 Ill. Adm. Code 1840.17, review of a permit issued pursuant to 62 Ill. Adm. Code 1785.23 and hearings requested under 62 Ill. Adm. Code 1773.24. Failure to file a request for hearing within this ~~thirty (~~ 30~~)~~ day time period shall result in a waiver of the right to such hearing; requests for hearing filed after the expiration of the ~~thirty (~~ 30~~)~~ day time period shall be dismissed on motion of the Department in accordance with 62 Ill. Adm. Code 1848.12.

b) The hearing request shall state:
   1) The petitioner's name and address;

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

   2) A clear statement of the facts entitling the petitioner to relief, including the petitioner's interest(s) which is or may be adversely affected by the Department's final decision;
   3) How the Department's final decision may or will adversely affect the interest(s) specified;
   4) An explanation of each specific alleged error in the Department's final decision, including reference to the statutory and/or regulatory provisions allegedly violated;
   5) The specific relief sought from the Department; and
   6) Any other relevant information.

c) Any party to the hearing may request that a pre-hearing conference be scheduled, in accordance with 62 Ill. Adm. Code 1848.7.

d) Unless a pre-hearing conference has been scheduled or unless the person requesting the hearing waives the ~~thirty-(~~ 30~~)~~ day time limit, the Department shall start the hearing within ~~thirty-(~~ 30~~)~~ days after ~~of~~ the hearing request. The hearing shall be on the record and adjudicatory in nature. No person who presided at an informal conference under 62 Ill. Adm. Code 1773.13(c) or a public hearing under 62 Ill. Adm. Code 1773.14 shall either preside at the hearing or participate in the decision following the hearing.

e) Notice of hearing. The petitioner and other interested persons shall be given written notice of the hearing in accordance with 62 Ill. Adm. Code 1848.5 at least five ~~(~~5~~)~~ working days prior thereto. Notice of the hearing shall also be posted at the appropriate district or field office.

f) Record of hearing. A complete record of the hearing and all testimony shall be made by the Department and recorded stenographically. Such record shall be maintained and shall be available to the public until at least ~~sixty--(~~ 60~~)~~ days after the final decision referred to in subsection (j) below is issued.

g) Burden of proof. ~~The--party--seeking--to--reverse--the--Department's decision--shall--have--the--burden--of--proving--that-the-Department's decision-was-clearly-erroneous.~~
   1) In a proceeding to review a decision on an application for a new permit:
      A) If the permit applicant is seeking review, the Department shall have the burden of going forward to establish a prima facie case as to the failure to comply with the applicable requirements of the State Act or regulations or as to the appropriateness of the permit terms and conditions, and the permit applicant shall have the ultimate burden of persuasion as to entitlement to the permit or as to the inappropriateness of the permit terms and conditions.
      B) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion by a preponderance of the evidence that the permit application fails in some manner to comply with the applicable

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

requirements of the State Act or regulations.

2) In all other proceedings held under this Section, the party seeking to reverse the Department's decision shall have the burden of proving by a preponderance of evidence that the Department's decision is in error.

h) Within ~~thirty~~ (30) days after the close of the record, the hearing officer shall issue and serve, by certified mail, each party who participated in the hearing with a proposed decision consisting of proposed written findings of fact, conclusions of law and an order adjudicating the hearing request.

i) Within ten (10) days after service of the hearing officer's proposed decision, each party to the hearing may file with the hearing officer written exceptions to the hearing officer's proposed decision, stating how and why such decision should be modified or vacated. All parties shall have ten (10) days after service of written exceptions to file a response thereto with the hearing officer. Failure to file written exceptions or a response thereto is not a failure to exhaust administrative remedies and does not affect a party's right to judicial review.

j) If no written exceptions are filed, the hearing officer's proposed decision shall become final ten (10) days after service of such decision. If written exceptions are filed, the hearing officer shall within ~~fifteen~~ (15) days following the time for filing a response thereto either issue his final administrative decision affirming or modifying his proposed decision, or shall vacate the decision and remand the proceeding for rehearing.

k) Request for temporary relief.

1) Any party may file a request for temporary relief at any time prior to a decision by the hearing officer, so long as the relief sought is not the issuance of a permit where a permit application has been disapproved in whole or in part. The request for temporary relief shall include:

A) A detailed written statement setting forth the reasons why relief should be granted;

B) A statement of the specific relief requested;

C) A showing that there is a substantial likelihood that the person seeking relief will prevail on the merits of the final determination of the proceeding; and

D) A showing that the relief sought will not adversely affect the public health or safety or cause significant, imminent environmental harm to land, air or water resources.

2) The hearing officer may hold a hearing on any issue raised by the request for temporary relief.

3) Within ~~fifteen~~ (15) days after the close of the record on the request for temporary relief, the hearing officer shall issue an order or decision granting or denying such temporary relief. Temporary relief may be granted only if:

A) All parties to the proceeding have been notified and given an opportunity to be heard on the request for temporary relief;

B) The person requesting such relief shows a substantial likelihood of prevailing on the merits of the final determination of the proceeding;

C) Such relief will not adversely affect the public health or safety, or cause significant, imminent environmental harm to land, air or water resources; and

D) The relief sought is not the issuance of a permit where a permit has been denied by the Department, in whole or in part, except that continuation under an existing permit shall be allowed where the applicant has a valid permit issued pursuant to 62 Ill. Adm. Code 300.

l) Judicial review. Following service of the Department's final administrative decision, any person with an interest which is or may be adversely affected and who has participated in the administrative hearing under this Section may request judicial review of that decision in accordance with the Administrative Review Law [735 ILCS 5/Art. III ~~III~~], if:

1) The person is aggrieved by the Department's final administrative decision; or

2) The hearing officer or Department failed to act within the time limits specified in the Surface Mining Control And Reclamation Act of 1977 (30 USC ~~U.S.C.~~ 1201 et seq.), the Surface Coal Mining Land Conservation and Reclamation Act (State Act) [225 ILCS 720] or this Section.

3) Review under this subsection (l) shall not be construed to limit rights established in Section 8.05 of the State Act [225 ILCS 720/8.05].

(Source: Amended at 22 Ill. Reg. 20144, effective ~~NOV 5 1998~~)

Section 1847.9 Bond Release Hearings

a) A hearing requested pursuant to 62 Ill. Adm. Code 1800.40(e) shall be held within ~~thirty~~ (30) days after receipt of the request for hearing.

b) Bond release hearings shall be held in the locality of the surface coal mining operation from which bond release is sought, at the location of the Department's office, or at the State capital, at the option of the objector.

c) Any party to the hearing may request that a pre-hearing conference be scheduled, in accordance with 62 Ill. Adm. Code 1848.7.

d) Notice of hearing. All parties shall be given written notice of the hearing in accordance with 62 Ill. Adm. Code 1848.5 at least five ~~(5)~~ working days prior thereto. The Department shall advertise the date, time and location of the hearing in a newspaper of general circulation

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

in the locality of the surface coal mining operation for two ~~(2)~~ consecutive weeks.

e) Settlement agreement. If a settlement agreement is entered into at any stage of the hearing process, the person with whom the settlement is reached will be deemed to have waived all right to further review of the proposed bond release, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a waiver clause to this effect.

f) Summary disposition. Where the person who requested the hearing fails to appear at the hearing, that person will be deemed to have waived his right to a hearing.

g) Burden of proof. The party seeking to reverse the Department's proposed release of bond shall have the burden of proving by a preponderance of evidence that the Department's decision is in error ~~was clearly erroneous~~.

h) Record of hearing. A complete record of the hearing and all testimony shall be made by the Department and recorded stenographically. Such record shall be maintained and shall be available to the public until at least ~~sixty (~~ 60~~)~~ days after the Director's decision referred to in subsection (k) is issued.

i) Within ~~thirty (~~ 30~~)~~ days after the close of the record for the bond release hearing, the hearing officer shall issue and serve, by certified mail, each party who participated in the hearing with a proposed decision consisting of proposed written findings of fact, conclusions of law and an order adjudicating the hearing request.

j) Within ten ~~fifteen (15)~~ days after service of the hearing officer's proposed decision, each party to the hearing may file with the hearing officer ~~Director~~ written exceptions to the hearing officer's proposed decision, stating how and why such decision should be modified or vacated. All parties shall have ten ~~fifteen (15)~~ days after service of written exceptions to file a response thereto with the hearing officer ~~Director~~. Failure to file written exceptions or a response thereto is not a failure to exhaust administrative remedies and does not affect a party's right to judicial review.

k) If no written exceptions are filed, the hearing officer's proposed decision shall become final ten ~~fifteen (15)~~ days after service of such decision. If written exceptions are filed, the hearing officer ~~Director~~ shall, within ~~fifteen (15)~~ days following the time for filing a response thereto, either issue his ~~the Department's~~ final administrative decision affirming or modifying his proposed ~~the hearing officer's~~ decision, or shall vacate the ~~hearing officer's~~ decision and remand the proceeding ~~to the hearing officer~~ for rehearing ~~further action~~.

l) The Department's final administrative decision may be appealed in accordance with the Administrative Review Law ~~(Ill. Rev. Stat. 1991, ch. 110, pars. 3-101 through 3-112)~~ [735 ILCS 5/III3].

(Source: Amended at 22 Ill. Reg. 20144, effective

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

NOV 5 1998)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Areas Designated By Act of Congress

2) Code Citation: 62 Ill. Adm. Code 1761

3) Section Number: 1761.12 — Adopted Action: Amend

4) Statutory Authority: Implemented and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720]

5) Effective Date of Amendments: November 5, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this amendment contain incorporation by reference? No

8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal published in Illinois Register: 22 Ill. Reg. 5190 (March 20, 1998)

10) Has JCAR issued a Statement of Objection to these rules? No

11) Difference(s) between proposal and final version:

a) In Section 1761.12(b)(2), "Section 1761.11(f) and (g)" has been changed to "Section 1761.11(a)(6) and (7)" and "within 30 days of" has been changed to "within 30 days after".

b) In Section 1761.12(d)(3)(B), "foot" has been changed to "feet".

c) In Section 1761.12(e)(1), "of" has been changed to "after".

d) The numbering has been simplified throughout this rulemaking.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this amendment replace an emergency rule currently in effect? No

14) Are there any amendments pending of this Part? No

15) Summary and Purpose of Amendment: Section 1761.12(b)(1) and (c) have been changed to correct errors in referenced regulations.

16) Information and questions regarding this adopted amendment shall be

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

directed to:

Karen Jacobs, Legal Counsel
Department of Natural Resources
524 South Second Street
Springfield, IL 62701
(217)782-1809

The full text of the Adopted Amendments begins on the next page:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1761
AREAS DESIGNATED BY ACT OF CONGRESS

Section
1761.1 Scope
1761.11 Areas Where Mining is Prohibited or Limited
1761.12 Procedures

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 4933; amended at 11 Ill. Reg. 7976, effective July 1, 1987; amended at 14 Ill. Reg. 11777, effective January 1, 1991; amended at 15 Ill. Reg. 17115, effective January 1, 1992; amended at 17 Ill. Reg. 10909, effective July 1, 1993; amended at 18 Ill. Reg. 1935, effective January 19, 1996; amended at 22 Ill. Reg. 20152, effective NOV 5 1998.

Section 1761.12 Procedures

a) Upon receipt of a complete application for a surface coal mining and reclamation operation permit, the Department shall review the application to determine whether surface coal mining operations are limited or prohibited under Section 1761.11 on the lands which would be disturbed by the proposed operations.

b) Federal recreational systems; public buildings; cemeteries

1) Where the proposed operation would be located on any lands listed in Section 1761.11(a)~~;--(f)-or-(g)~~, the Department shall reject the application if the applicant has no valid existing rights for the area or if the operation did not exist on August 3, 1977.

2) If the Department is unable to determine whether the proposed operation is located within the boundaries of any of the lands in Section 1761.11 (a) or closer than the limits provided in Section 1761.11(a)(6) ~~(f)~~ and (7) ~~(g)~~, the Department shall transmit a copy of the relevant portions of the permit application to the appropriate Federal, State, or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it must respond within ~~thirty-(~~ 30~~)~~ days after ~~of~~ receipt of the request. The National Park Service or the U.S. Fish and Wildlife Service shall be notified of any claim of valid existing rights (VER) pertaining to areas within the boundaries of areas under their jurisdiction and shall have ~~thirty-(~~ 30~~)~~ days from receipt of the notification in which to respond. The Department, upon request

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

by the appropriate agency, shall grant an extension to the 30-day period of an additional ~~thirty-(~~ 30~~)~~ days. If no response is received within 30-day period or within the extended period granted, the Department may make the necessary determination based on the information it has available.

c) Where the proposed mining operation is proposed to be conducted within ~~one--hundred--(~~ 100~~)~~ feet measured horizontally of the outside right-of-way line of any public road (except as provided in Section 1761.11(a)(4)(B) ~~1761.11(d)(2)~~) and the applicant does not have VER, or where the applicant proposes to relocate or close any public road, the Department shall:

1) Require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road for relocation or closure of a public road;

2) Provide public notice in a newspaper of general circulation of the affected locale of an opportunity for a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected. Any person with an interest which is or may be adversely affected by the proposed mining operation may request in writing that the Department hold a public hearing. Such request shall be submitted to the Department within ~~fourteen (~~ 14~~)~~ days after the newspaper notice required by this subsection;

3) If a public hearing is requested, provide appropriate advance notice of the public hearing, to be published in a newspaper of general circulation in the affected locale at least two ~~(2)~~ weeks prior to the hearing; and

4) Make a written finding based upon information received at the public hearing within ~~thirty-(~~ 30~~)~~ days after completion of the hearing, or after any public comment period ends if no hearing is held, as to whether the interests of the affected public and landowners will be protected from the proposed mining operations. No mining shall be allowed within ~~one-hundred-(~~ 100~~)~~ feet of the outside right-of-way line of a road unless the Department determines that the interests of the affected public and landowners will be protected.

d) Occupied dwellings

1) Absent VER, where the proposed surface coal mining operations would be conducted within ~~three-hundred--(~~ 300~~)~~ feet, measured horizontally, of any occupied dwelling, the permit applicant shall submit with the application a written waiver by lease, deed or other conveyance from the owner of the dwelling, clarifying that the owner and signatory had the legal right to deny mining and knowingly waived that right. The waiver shall act as consent to such operations within a closer distance of the dwelling as specified.

2) Where the applicant for a permit after August 3, 1977, had

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

obtained a valid waiver prior to August 3, 1977, from the owner of an occupied dwelling to mine within ~~three-hundred-(~ 300~)~~ feet of such dwelling, a new waiver shall not be required.

3) Effect of waiver

A) Where the applicant for a permit after August 3, 1977, had obtained a valid waiver from the owner of an occupied dwelling, that waiver shall remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase.

B) A subsequent purchaser shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to State laws or if the mining has proceeded to within the ~~three-hundred--(~ 300 feet ~)--foot~~ limit prior to the date of purchase.

e) Publicly owned parks; places included in the National Register of Historic Places

1) Where the Department determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places, the Department shall transmit to the Federal, State, or local agencies with jurisdiction over the publicly owned park or National Register place a copy of applicable parts of the permit application together with a request for that agency's approval or disapproval of the operation, and a notice to that agency that it has ~~thirty-(~ 30~)~~ days from receipt of the request within which to respond and that failure to interpose a timely objection will constitute approval. The Department, upon request by the appropriate agency, may grant an extension to the 30-day period of an additional ~~thirty-(~ 30~)~~ days. Failure to interpose an objection within ~~thirty-(~ 30~)~~ days after ~~of~~ the extended period granted shall constitute an approval of the proposed permit.

2) A permit for the operation shall not be issued unless jointly approved by all affected agencies.

f) If the Department determines that the proposed surface coal mining operation is not prohibited under Section 7.01 of the State Act and this Part, it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of surface coal mining operations pursuant to 62 Ill. Adm. Code 1762 or 1764.

g) A determination by the Department that a person holds or does not hold a valid existing right or that surface coal mining operations did or did not exist on the date of enactment shall be subject to administrative and judicial review under 62 Ill. Adm. Code 1847.3.

(Source: Amended at 22 Ill. Reg. 20152, effective NOV 5 1998)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Bonding and Insurance Requirements For Surface Coal Mining and Reclamation Operations

2) Code Citation: 62 Ill. Adm. Code 1800

3)

Section Number:	Adopted Action:
1800.4	Amend
1800.40	Amend

4) Statutory Authority: Implemented and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720]

5) Effective Date of Amendments: November 5, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this amendment contain incorporations by reference? No

8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal published in Illinois Register: 22 Ill. Reg. 5195 (March 20, 1998)

10) Has JCAR issued a Statement of Objection to these rules? No

11) Difference(s) between proposal and final version:

a) In Section 1800.40(c)(1), "percent" has been changed to "%".

b) All numbering has been simplified.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this amendment replace an emergency rule currently in effect? No

14) Are there any amendments pending of this Part? No

15) Summary and Purpose of Amendment:

Section 1800.4(a) has been corrected to reflect the merging of the Department of Mines and Minerals into the Department of Natural Resources.

Section 1800.40(b)(2) has been changed to make the wording identical to its federal counterpart.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

16) Information and questions regarding this adopted amendment shall be directed to:

Karen Jacobs, Legal Counsel
Department of Natural Resources
524 South Second Street
Springfield, IL 62701
(217)782-1809

The full text of the Adopted Amendments begins on the next page:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1800
BONDING AND INSURANCE REQUIREMENTS FOR
SURFACE COAL MINING AND RECLAMATION OPERATIONS

Section
1800.1 Scope and Purpose
1800.2 Objective (Repealed)
1800.4 Department Responsibilities
1800.5 Definitions
1800.11 Requirement to File a Bond
1800.12 Form of the Performance Bond
1800.13 Period of Liability
1800.14 Determination of Bond Amount
1800.15 Adjustment of Amount
1800.16 General Terms and Conditions of Bond
1800.17 Bonding Requirements for Underground Coal Mines and Long-Term Coal-Related Surface Facilities and Structures
1800.20 Surety Bonds
1800.21 Collateral Bonds
1800.23 Self-Bonding
1800.30 Replacement of Bonds
1800.40 Requirement to Release Performance Bonds
1800.50 Forfeiture of Bonds
1800.60 Terms and Conditions for Liability Insurance

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 9354; amended at 11 Ill. Reg. 7985, effective July 1, 1987; amended at 14 Ill. Reg. 11785, effective January 1, 1991; amended at 17 Ill. Reg. 10916, effective July 1, 1993; amended at 20 Ill. Reg. 1939, effective January 19, 1996; amended at 20 Ill. Reg. 15683, effective December 2, 1996; amended at 22 Ill. Reg. 20157, effective NOV 5 1998.

Section 1800.4 Department Responsibilities

a) The Illinois Department of Natural Resources, Office of Natural Resources ~~Mines and Minerals~~ (Department) shall prescribe and furnish forms for filing performance bonds.

b) The Department shall determine the amount of the bond for each area to be bonded, in accordance with Section 1800.14. The Department shall also adjust the amount as acreage in the permit area is revised, or when other relevant conditions change, according to the requirements

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

of Section 1800.15.

c) The Department may accept a self-bond if the permittee meets the requirements of Section 1800.23.

d) The Department shall release liability under a bond or bonds in accordance with Section 1800.40.

e) If the conditions specified in Section 1800.50 occur, the Department shall take appropriate action to cause all or part of a bond to be forfeited in accordance with procedures of that Section.

f) The Department shall require in the permit that adequate bond coverage be in effect at all times. Except as provided in Section 1800.16(e)(2), operating without a bond is a violation of a condition upon which the permit is issued.

20157

(Source: Amended at 22 Ill. Reg. _____, effective NOV 5 1998)

Section 1800.40 Requirement to Release Performance Bonds

a) Bond release application.

1) The permittee may file an application with the Department for the release of all or part of a performance bond at any time.

2) Within ~~thirty (~~ 30~~)~~ days after an application for bond release has been filed with the Department, the operator shall submit a copy of an advertisement placed at least once a week for four ~~(4)~~ successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement shall be considered part of any bond release application and shall contain the permit number and approval date, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the operator's approved reclamation plan, and the name and address of the Department to which written comments, objections, or requests for public hearings on the specific bond release may be submitted pursuant to subsection (e). In addition, as part of any bond release application, the applicant shall submit copies of letters which he or she has sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond. The operator shall submit a certification of publication for such advertisement prior to the Department's final administrative decision releasing bond.

3) The permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the State Act, the regulatory program and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

b) Inspection by Department.

1) Upon filing of the bond release application, the Department shall, within ~~thirty (~~ 30~~)~~ days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution. The surface owner, agent, or lessee shall be given notice of such inspection and may participate with the Department in making the bond release inspection. The Department may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.

2) Within ~~sixty (~~ 60~~)~~ days from the filing of the bond release application, if no public hearing is held pursuant to subsection (e), or, within ~~thirty (~~ 30~~)~~ days after a public hearing has been held pursuant to subsection (e), the Department shall notify, in writing ~~serve, by certified mail~~, the permittee, the municipality and county in which the surface coal mining operation is located, the surety, or other persons with an interest in bond collateral who have requested notification under Section 1800.21(e), and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, its final administrative decision to release or not to release all or part of the performance bond.

c) The Department may release all or part of the bond for the entire permit area or incremental area if the Department is satisfied that all the reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished in accordance with the following schedules for reclamation of Phases I, II, and III:

1) At the completion of Phase I, after the operator completes the backfilling, regrading (which includes the replacement of topsoil) and drainage control of a bonded area in accordance with the approved reclamation plan, ~~sixty (~~ 60~~)~~% ~~percent~~ of the bond or collateral for the applicable area.

2) At the completion of Phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond. When determining the amount of bond to be released after successful revegetation has been established, the Department shall retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party and for the period specified for

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

operator responsibility in Section 6.08(d)(2) of the State Act for reestablishing revegetation. No part of the bond or deposit shall be released under subsection (c)(2) so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by Section 3.10 of the State Act and by 62 Ill. Adm. Code 1816 or 1817 or until soil productivity for prime farmland has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to Section 2.02(a) of the State Act and 62 Ill. Adm. Code 1823. Where a silt dam is to be retained as a permanent impoundment pursuant to 62 Ill. Adm. Code 1816 or 1817, the Phase II portion of the bond may be released under this subsection so long as provisions for sound future maintenance by the operator or the landowner have been made with the Department.

3) At the completion of Phase III, after the operator has completed successfully all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in 62 Ill. Adm. Code 1816.116 or 1817.116. However, no bond shall be fully released under this subsection until the reclamation requirements of the State Act and the permit are fully met.

d) If the Department disapproves the application for release of the bond or portion thereof, the Department shall notify the permittee, the surety, and any person with an interest in collateral as provided for in Section 1800.21(e), in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing, pursuant to subsection (e) below.

e) Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any Federal, State, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond with the Department within ~~thirty~~ 30 days after the last publication of the notice required by subsection (a)(2). If written objections are filed and a hearing is requested, the hearing shall be held in accordance with 62 Ill. Adm. Code 1847.9.

(Source: Amended at 22 Ill. Reg. 20157, effective NOV 5 1998)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Department Inspections

2) Code Citation: 62 Ill. Adm. Code 1840

3)

Section Number:	Adopted Action:
1840.1	Amend
1840.11	Amend

4) Statutory Authority: Implemented and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720]

5) Effective Date of Amendments: November 5, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this amendment contain incorporations by reference? No

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal published in Illinois Register:
22 Ill. Reg. 5201 (March 20, 1998)

10) Has JCAR issued a Statement of Objection to these rules? No

11) Difference(s) between proposal and final version:

a) In Section 1840.1, the "Ill. Rev. Stat." has been stricken and replaced with "[225 ILCS 720]".

b) In Section 1840.11(g)(3)(B), "Sections" has been changed to "Section".

c) All numbering has been simplified.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this amendment replace an emergency rule currently in effect? No

14) Are there any amendments pending of this Part? No

15) Summary and Purpose of Amendment:

Section 1825.11 has been revised to require that crop testing on high capability land be initiated under the same time frame requirements as prime farmland, due to their similarities. In addition, changes have been made to reflect agency name changes.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

16) Information and questions regarding this adopted amendment shall be directed to:

Karen Jacobs, Legal Counsel
Department of Natural Resources
524 South Second Street
Springfield, IL 62701
(217)782-1809

The full text of the Adopted Amendments begins on the next page:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1840
DEPARTMENT INSPECTIONS

Section
1840.1 Scope
1840.2 Monitoring and Reporting
1840.11 Inspections by the Department
1840.12 Right of Entry
1840.14 Availability of Records
1840.15 Citizens' Requests for State Inspections
1840.16 Review of Adequacy and Completeness of Inspections
1840.17 Review of Decision Not to Inspect or Enforce

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; codified at 8 Ill. Reg. 12288; amended at 11 Ill. Reg. 8036, effective July 1, 1987; amended at 20 Ill. Reg. 1949, effective January 19, 1996; amended at 22 Ill. Reg. 20163, effective NOV 5 1998.

Section 1840.1 Scope

This Part sets forth the Illinois Department of Natural Resources' ~~Mines--and Minerals'~~ (Department) monitoring, reporting, inspection, and enforcement regulations for surface coal mining and reclamation operations, for coal exploration operations which substantially disturb the natural land surface and for applicants for permits under the Surface Coal Mining Land Conservation and Reclamation Act ~~Ill.-Rev.-Stat.-1985,-ch.-96-1/2,-pars.-7901.01-et-seq.~~ (State Act).

(Source: Amended at 22 Ill. Reg. 20163, effective NOV 5 1998)

Section 1840.11 Inspections by the Department

a) The Department shall conduct an average of at least one ~~(1)~~ partial inspection per month of each active surface coal mining and reclamation operation under its jurisdiction and shall conduct partial inspections of each inactive surface coal mining and reclamation operation under its jurisdiction to ensure enforcement of the approved State program. A partial inspection is an on-site or aerial review of a person's compliance with any of the permit conditions and requirements imposed under the Federal Act, State Act and 62 Ill. Adm. Code 1700 through 1850. The inspector shall collect evidence of any

violation of the Federal Act, the State Act or 62 Ill. Adm. Code 1700 through 1850 observed.

b) The Department shall conduct an average of at least one ~~(1)~~ complete inspection per calendar quarter of each active or inactive surface coal mining and reclamation operation under its jurisdiction. A complete inspection is an on-site review of a person's compliance with all permit conditions and requirements imposed under the Federal Act, the State Act and 62 Ill. Adm. Code 1700 through 1850 within the entire area disturbed, impacted or affected by surface coal mining and reclamation operations. The inspector shall collect evidence of any violation of the Federal Act, State Act or 62 Ill. Adm. Code 1700 through 1850 observed.

c) The Department shall conduct periodic inspections of all coal exploration operations required to comply with the Federal Act, the State Act, and 62 Ill. Adm. Code 1700 through 1850. The inspector shall collect evidence of any violation of the Federal Act, State Act, or 62 Ill. Adm. Code 1700 through 1850 observed.

d) Aerial inspections.

1) Aerial inspections shall be conducted in a manner which reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected.

2) Any potential violation observed during an aerial inspection shall be investigated on site within three days; provided, that any indication of a condition, practice or violation constituting cause for the issuance of a cessation order under 62 Ill. Adm. Code 1843.11 shall be investigated on site immediately. An on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of subsections (a) and (b) of this Section.

e) The inspections required under subsections (a), (b), (c) and (d) of this Section shall:

1) Be carried out on an irregular basis, so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;

2) Occur without prior notice to the permittee or any agent or employee of such permittee, except for necessary on-site meetings; and

3) Include the prompt filing of inspection reports adequate to enforce the requirements of the Federal Act, State Act, and 62 Ill. Adm. Code 1700 through 1850.

f) For the purposes of Section 1840.11, an inactive surface coal mining and reclamation operation is one for which:

1) The Department has secured from the permittee the written notice provided for under 62 Ill. Adm. Code 1816.131(b) or 1817.131(b); or

2) Reclamation Phase II as defined at 62 Ill. Adm. Code 1800.40 has

been completed and the liability of the permittee has been reduced by the Department in accordance with the State program.

g) Abandoned site means a surface coal mining and reclamation operation for which the Department has found in writing that:

1) All surface and underground coal mining and reclamation activities at the site have ceased;

2) The Department has issued at least one notice of violation or the initial program equivalent, and either:

A) Is unable to serve the notice despite diligent efforts to do so; or

B) The notice was served and has progressed to a failure-to-abate cessation order or the initial program equivalent;

3) The Department:

A) Is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

B) Is taking action pursuant to Section ~~Sections~~ 8.04(e), 8.04(f), 8.06(d) or 8.08 of the State Act [25 ILCS 720/8.04(e), 8.04(f), 8.06(d), 8.08] to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

4) Where the site is, or was, permitted and bonded:

A) The permit has either expired or been revoked; and

B) The Department has initiated and is diligently pursuing forfeiture of, or has forfeited, any available performance bond.

h) In lieu of the inspection frequency established in subsections (a) and (b) of this Section, the Department shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year.

1) In selecting an alternate inspection frequency authorized under this subsection, the Department shall first conduct a complete inspection of the abandoned site and provide public notice and the opportunity to comment under subsection (h)(2) below. Following the inspection and public notice, the Department shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

A) How the site meets each of the criteria under the definition of an abandoned site under subsection (g) above and thereby

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

qualifies for a reduction in inspection frequency;

B) Whether, and to what extent, there exists on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harm to land, air or water resources;

C) The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

D) The degree to which erosion and sediment control is present and functioning;

E) The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

F) The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with them; and

G) Based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

2) The public notice and opportunity to comment required under subsection (h)(1) above shall be provided as follows:

A) The Department shall place a notice in a local newspaper of general circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments.

B) The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the Department where written comments on the reduced inspection frequency may be submitted and the closing date of the comment period.

(Source: Amended at 22 Ill. Reg. 20163, effective Nov. 5, 1998)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: General Definitions

2) Code Citation: 62 Ill. Adm. Code 1701

3) Section Number: 1701.Appendix A — Adopted Action: Amend

4) Statutory Authority: Implemented and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720]

5) Effective Date of Amendments: November 5, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this amendment contain incorporation by reference? No

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal published in Illinois Register: 22 Ill. Reg. 5207 (March 20, 1998)

10) Has JCAR issued a Statement of Objection to these rules? No

11) Difference(s) between proposal and final version:

a) In the Source note, "recodified from the Department of Mines and Minerals to the Department of Natural Resources at 21 Ill. Reg. 16192;" has been added after "January 19, 1996;".

b) In the definition of "Historically used for cropland", the word "years" has been added in the second paragraph after the word "five".

c) In the definition of "Qualified registered professional engineer", "The" has been changed to "the" and "[225 ILCS 325/12]" has been changed to "[225 ILCS 325/9]".

d) In the definition of "Surface coal mining operations", "per centum" has been changed to "%".

e) In the definition of "Surface mining operations", a "(" has been added before the word "Section" and a ")" has been added at the end of the sentence.

f) In the definition of "Underground mining operations", a colon has been added after the word "means" and "the underground excavation of coal;

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

and" has been indented; a "(" has been added before the word "Section"; and a ")" has been added at the end of the sentence.

g) In the definition of "Unwarranted failure to comply", a "(" has been added before the word "Section" and a ")" has been added at the end of the sentence.

h) The numbering has been simplified throughout the rulemaking.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this amendment replace an emergency rule currently in effect? No

14) Are there any amendments pending of this Part? No

15) Summary and Purpose of Amendment:

The Illinois Department of Natural Resources, Office of Mines and Minerals (Department), was notified by the federal Office of Surface Mining (OSM) on October 30, 1997 that the existing regulation was less effective than its federal counterpart as required by the federal Surface Mining Control and Reclamation Act. In accordance with 30 CFR 732.17(f)(1), the Department was instructed to provide program amendments to correct its defective regulations.

In order to be no less effective than its federal counterpart, the definition of "previously mined area" in Section 1701.Appendix A has been amended to reflect the federal definition.

16) Information and questions regarding this adopted amendment shall be directed to:

Karen Jacobs, Legal Counsel
Department of Natural Resources
524 South Second Street
Springfield, IL 62701
(217)782-1809

The full text of the Adopted Amendments begins on the next page:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1701
GENERAL DEFINITIONS

Section
1701.5 Definitions
APPENDIX A Definitions

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 4932; amended at 11 Ill. Reg. 8075, effective July 1, 1987; amended at 14 Ill. Reg. 11800, effective January 1, 1991; amended at 15 Ill. Reg. 17141, effective January 1, 1992; amended at 17 Ill. Reg. 10947, effective July 1, 1993; amended at 20 Ill. Reg. 1962, effective January 19, 1996; recodified from the Department of Mines and Minerals to the Department of Natural Resources at 21 Ill. Reg. 16192; amended at 22 Ill. Reg. 20169, effective NOV 5 1998.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

Section 1701.APPENDIX A Definitions

As used in 62 Ill. Adm. Code 1700 through 1850, the following terms have the specified meanings, except when another meaning is given:

"Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

"Acid - forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water or weather processes, form acids that may create acid drainage.

"Act or Federal Act" means the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87. (30 U.S.C. 1201 et seq.).

"Adjacent area" means the area located outside the permit area, or shadow area, where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed mining operations.

"Administratively complete application" means an application for permit approval or approval for coal exploration where required, which the Department determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

"Affected area" means, with respect to surface mining activities, any land or water upon or in which those activities are conducted or located. With respect to underground mining activities, affected area means: any water or surface land upon which those activities are conducted or located.

"Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

"Applicant" means any person seeking a permit; permit revision; renewal; or transfer, assignment or sale from the Department to conduct surface coal mining and reclamation operations or, where required, seeking approval for coal exploration.

"Applicant Violator System or AVS" means the computer system maintained by OSM to identify ownership or control links involving permit applicants, permittees, and persons cited in violation notices.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

"Application" means the documents and other information filed with the Department under these regulations for the issuance of permits; revisions; renewals; and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations or, where required, for coal exploration.

"Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, and spoil piles and coal refuse piles eliminated. Permanent water impoundments may be permitted where the Department has determined that they comply with 62 Ill. Adm. Code 1816.49 and 1816.56, 1816.133 or 1817.49, 1817.56 and 1817.133. Section 1.03(a)(2) of the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720/1.03(a)(2)].

"Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for specific use.

"Article" means an article of the State Act.

"Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the cliff or highwall and transporting the coal along an auger bit to the surface.

"Best technology currently available" means equipment, devices, systems, methods, or techniques which will

prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by 62 Ill. Adm. Code 1816.42; and

minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the Department, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 62 Ill. Adm. Code 1816 and 1817.

"Boxcut" means the first open cut resulting in the placing of

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

overburden on unmined land adjacent to the initial pit.

"Cemetery" means any area of land where human bodies are interred.

"Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-84 found at pp. 247-252 in Vol 5.05 of the Annual Book of ASTM Standards published by the American Society for Testing and Materials, 1916 Race St., Philadelphia PA 19103.

"Coal exploration" means the field gathering of:

surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 62 Ill. Adm. Code 1700 through 1850.

"Coal mine waste" means coal processing waste and underground development waste.

"Coal mining operation" means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the area upon which such activities occur.

"Coal processing or coal preparation" means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.

"Coal preparation plant" means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities including, but not limited to the following: loading facilities; storage and stockpile facilities; sheds, shops and other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas.

"Coal processing waste" means earth materials which are separated and wasted from the product coal during cleaning, concentrating, or other processing or preparation of coal.

"Combustible material" means organic material that is capable of

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

"Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for functions of community groups; used for an educational, cultural, historic, religious, scientific, correctional, mental-health or physical-health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

"Compaction" means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

"Complete and accurate application" means an application for permit approval or approval for coal exploration where required, which the Department determines contains all information which the State Act and 62 Ill. Adm. Code 1700 - 1850 require.

"Consolidated material" means materials of sufficient hardness or stability to resist weathering so as to inhibit erosion or sloughing.

"Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

"Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

the proposed operation;

all existing operations;

any operation for which a permit application has been submitted to the Department.

"Darkened surface soil" means mineral horizons formed at or adjacent to the surface of the soil which are higher in organic matter content, and visibly darker in color than the immediately underlying horizons.

"Department" means the Illinois Department of Natural Resources, Office of Mines and Minerals, or its successor.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

"Direct financial interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property, and other financial relationships.

"Director" means the Director of the Department of Natural Resources.

"Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by 62 Ill. Adm. Code 1800 is released.

"Diversion" means a channel, embankment, or other man-made structure constructed to divert water from one area to another.

"Downslope" means the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor.

"Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

"Employee" means

any person employed by the Department who performs any function or duty under the Act; and

advisory board or commission members and consultants who perform any function or duty under the Act, if they perform decision-making functions for the Department under the authority of State law or regulations. However, members of advisory boards or commissions established in accordance with State law or regulations to represent multiple interests are not considered to be employees. State officials may through State law or regulations expand this definition to meet their program needs.

"Ephemeral stream" means a stream which meets both requirements:

It flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice; and

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

It has a channel bottom that is always above the local water table.

"Excess spoil" means spoil material disposed of in a location other than the mined-out area; provided, the spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with 62 Ill. Adm. Code 1816.102(d) and 1817.102(d) in nonsteep slope areas shall not be considered excess spoil.

"Existing structure" means a structure used in connection with surface coal mining and reclamation operations for which construction began prior to June 1, 1982.

"Federal Director" means the Director of the Federal Office of Surface Mining Reclamation and Enforcement.

"Federal violation notice" means a violation notice issued by OSM or by another agency or instrumentality of the United States.

"Final cut" means the last pit created in a surface-mined area.

"Fragile lands" means geographic areas containing important natural, ecologic, scientific or esthetic resources that could be damaged or destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, National Natural Landmark sites, areas where mining may cause flooding, environmental corridors containing a concentration of ecologic and esthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under Section 7.01 of the State Act [225 ILCS 720/7.01] and 62 Ill. Adm. Code 1761.11, if those areas have characteristics requiring additional areal protection or if the buffer zone itself contains fragile resources.

"Fugitive dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation, it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.

"Gravity discharge" means, with respect to underground mining activities, mine drainage that flows freely in an open channel downgradient. Mine drainage that occurs as a result of flooding a

mine to the level of the discharge is not gravity discharge.

"Ground cover" means the area of ground covered by the combined aboveground parts of vegetation and by the litter that is produced naturally on site.

"Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

"Head-of-hollow fill" means a fill structure consisting of any material, other than organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than ~~twenty~~ ~~(~~ 20~~)~~ degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten ~~(~~10~~)~~ degrees. In head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

"High capability land" means land not meeting the definition of prime farmland or land exempted in accordance with 62 Ill. Adm. Code 1785.17 where the Department determines the following three facts are present together:

The land is capable of being reclaimed for row-crop agricultural purposes;

The land is suitable for row-crop agricultural purposes based on United States Soil Conservation Service soil survey classifications of the affected land prior to mining (all soil types in capability Classes I, II, III and those soil types in capability Class IV with slopes of five ~~(~~5~~)~~ percent or less), as set forth in Land-Capability Classification, Agriculture Handbook No. 210, published by the U.S. Department of Agriculture, Soil Conservation Service in 1973; and

The optimum future use of the land is for row-crop agricultural purposes.

"Highwall" means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

"Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

"Higher or better uses" means post-mining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

"Historically used for cropland" means:

Lands that have been used for cropland for any five ~~(~~5~~)~~ years or more out of the ten ~~(~~10~~)~~ years immediately preceding the acquisition, including purchase, lease, or option, of the lands for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations;

Lands that the Department determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration that the permit area is clearly cropland but falls outside the specific five~~(5)~~-years~~-year~~-in-ten ~~(10)~~ criterion, in which case the regulations for prime farmland shall be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or

Lands that would likely have been used as cropland for any five ~~(~~5~~)~~ out of the last ten ~~(~~10~~)~~ years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

"Historic lands" means, for purposes of implementing 62 Ill. Adm. Code 1762 and 1764, important historic, cultural, and scientific areas that could be damaged or be destroyed by surface coal mining operations. Examples of historic lands include archaeological and paleontological sites, National Historic Landmark sites, sites listed on or eligible for listing on a State or National Register of Historic Places, sites having religious or cultural significance to native Americans or religious groups or sites for which historic designation is pending.

"Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

"Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

"Imminent danger to the health and safety of the public" *means the existence of any condition or practice, or any violation of a permit or other requirements of the State Act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.* Section 1.03(a)(7) of the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720/1.03(a)(7)].

"Impounding structure" means a dam, embankment, or other structure used to impound water, slurry, or other liquid or semi-liquid material.

"Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

"Indirect financial interest" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's duties and the coal mining operation in which the spouse, minor children, or other resident relatives hold a financial interest.

"In situ processes" means activities conducted in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

"Interagency Committee" means the Interagency Committee on Surface Mining Control and Reclamation Section 1.05 of the State Act created.

"Intermittent stream" means:

A stream or reach of a stream that drains a watershed of at least one (1) square mile; or

A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

"Irreparable damage to the environment" means any damage to the

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

environment in violation of the State Act or these regulations that cannot be corrected by actions of the applicant.

"Land capability" means the soils' premining capabilities based on the United States Department of Agriculture, Soil Conservation Service classification system as found in Agriculture Handbook No. 210, Land-Capability Classification, (published in 1973) as interpreted from the soils map for sustained production of commonly cultivated crops or for the production of permanent vegetation.

"Land eligible for remining" means those lands that would otherwise be eligible for expenditures under Section 402(g)(4) or Section 404 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(g)(4), 1234).

"Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the Department in accordance with 62 Ill. Adm. Code 1780.23.

"Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Allowable support facilities include access roads, farm buildings, hedgerows, erosion control structures such as grassed waterways, terraces and sediment ponds, and other incidental facilities related to cropland management, except that no facility, other than erosion control structures, may be located on prime farmland.

"Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by the livestock or occasionally cut and cured for livestock feed. Allowable support facilities include access roads, farm buildings, erosion control structures such as grassed waterways, downdrains, terraces and sediment ponds, water impoundments used for stock watering, and other incidental facilities related to pasture management.

"Grazingland" means land used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

"Forestry" means land used or managed for the long-term production of wood, wood fiber, or wood-derived products. Allowable support facilities include water impoundments, access and fire control lanes, erosion control structures such as grassed waterways, downdrains, terraces and sediment ponds, and other incidental facilities related to sound multiple use management of the forest resource.

"Residential" means land used for single- and multiple-family housing, mobile home parks, and other residential lodgings.

"Industrial/Commercial" means land used for:

Extraction or transformation of materials for fabrication of products, wholesaling of products, or for long-term storage of products. This includes all heavy and light manufacturing facilities.

Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

"Recreation" is land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses. Allowable support facilities include water impoundments, access roads, and other incidental facilities related to the recreational development of the area.

"Fish and wildlife habitat" is land dedicated wholly or partially to the production, protection, or management of fish or wildlife. Allowable support facilities include water impoundments, access lanes, erosion control structures such as grassed waterways, downdrains, terraces and sediment ponds, and other incidental facilities related to sound fish and wildlife management practices.

"Developed water resources" includes land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply. Where appropriate, developed water resources are considered a joint or seasonal use with cropland, pastureland, forestry, recreation and fish and wildlife habitat.

"Undeveloped land or no current use or land management" includes land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

has been allowed to return to forest through natural succession. A post-mining designation of undeveloped land shall not be allowed for any land which is proposed to be affected by the mining operation.

"Mining operations or surface coal mining operations" means both surface mining operations and underground mining operations. Section 1.03(a)(11) of the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720/1.03(a)(11)].

"Moist bulk density" means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at one hundred and five degrees (105° C).

"MSHA" means the Mine Safety and Health Administration of the United States Department of Labor.

"Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

"Natural hazard lands" means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.

"Noxious plants" means any plant species listed as a "noxious weed" under regulations authorized by the Illinois Noxious Weed Law [505 ILCS 100]; any plant species whose seed is listed as a "prohibited (primary) noxious weed" or "restricted" (secondary) noxious weed" or "weed seeds" under regulations authorized by the Illinois Seed Law [505 ILCS 110/1]; or any plant which the Department of Agriculture has declared a pest under the Illinois Pesticide Act [415 ILCS 60].

"Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

"Office" means the Office of Surface Mining Reclamation and Enforcement, U.S.. Department of the Interior.

"Operator" means any person engaged in coal mining who removes or intends to remove more than ~~two-hundred-and-fifty-(~~ 250) tons of coal from the earth or from coal refuse piles by mining within ~~twelve-(~~ 12) consecutive calendar months in any one location.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

"Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

"Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

"Ownership or control link" means any relationship included in the definition of owned or controlled or owns or controls at 62 Ill. Adm. Code 1773.5(a) and (b) or in the violations review provisions of 62 Ill. Adm. Code 1773.15(b). It includes any relationship presumed to constitute ownership or control under the definition of "owned or controlled" or "owns or controls" unless such presumption has been successfully rebutted under the provisions of 62 Ill. Adm. Code 1773.24 and 1773.25.

"Perennial stream" means a stream that flows continuously during all of the calendar year or part of a stream that flows continuously during all of the calendar year. The stream or part of a stream flows continuously as a result of groundwater discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

"Performance bond" means a surety bond, collateral bond or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Federal Act, the State Act, 62 Ill. Adm. Code 1700 through 1850, and the requirements of the permit and reclamation plan.

"Performing any function or duty under this Act" means those decisions or actions, which if an employee performed or did not perform would affect the programs under the State Act.

"Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the Department and other appropriate State and Federal agencies.

"Permanent impoundment" means an impoundment which the Department approved and, if required, is approved by other State and Federal agencies for retention as part of the post-mining land use.

"Permit" means a permit to conduct surface coal mining and reclamation operations which the Department issues pursuant to the State program.

"Permit area" means the area of land and water within the boundaries of the permit which are designated on the permit application maps, as approved by the Department. This area shall include all areas which are or will be affected by the surface coal mining and reclamation operations during the term of the permit indicated on the approved map

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

which the operator submitted with the operator's application and which is required to be bonded under 62 Ill. Adm. Code 1800 and where the operator proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; provided, that areas adequately bonded under another valid permit may be excluded from a permit area. The permit area excludes the area defined in these regulations as the shadow area.

"Permit term" *means the period during which the permittee may engage in mining and reclamation operations under the permit.* Section 1.03(a)(18) of the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720/1.03(a)(18)].

"Permittee" means a person holding or required by the State Act or these regulations to hold a permit to conduct surface coal mining and reclamation operations issued by a Department pursuant to a State program.

"Person" means an individual, Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, general partnership, limited partnership, business trust association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization or any agency, unit, or instrumentality of Federal, State or local government including any publicly-owned utility or publicly-owned corporation of Federal, State or local government.

"Person having an interest which is or may be adversely affected" or "Person with a valid legal interest" shall include any person:

Who uses any resources of economic, recreational, esthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the Department; or

Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the Department.

"Placeland" means undisturbed land before any mining activity.

"Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in these regulations, precipitation event also includes that quantity of water emanating from snow cover as snow-melt in a limited period of time.

"Previously mined area" means land that had been mined before August

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

3, 1977 that has not been reclaimed to the standards of 62 Ill. Adm. Code 1700 to 1850.

"Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 (43 Fed. Reg. 4031 (1978)) and which have historically been used for cropland as that phrase is defined above.

"Principal shareholder" means any person who is the record or beneficial owner of ten ~~(10)~~ percent or more of any class of voting stock.

"Prohibited financial interest" means any direct or indirect financial interest in any coal mining operation.

"Property to be mined" means both the surface and mineral estates within the permit area and the mineral estate within the shadow area.

"Public building" means any structure that is owned or leased and principally used by a public government agency for public business or meetings.

"Public office" means a facility under the control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

"Public park" means an area or portion of an area dedicated or designated by any Federal, State, or local agency primarily for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved or held open to the public because of that use.

"Publicly-owned park" means a public park that is owned by a Federal, State or local governmental entity.

"Public road" means a road:

which has been designated as a public road pursuant to the law of the jurisdiction in which it is located;

which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction;

for which there is substantial (more than incidental) public use; and

which meets road construction standards for other public roads of the same classification in the local jurisdiction.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

"Qualified registered professional engineer" means a civil engineer, mining engineer, environmental engineer or general engineer meeting the requirements of Section 9 of the ~~The~~ Illinois Professional Engineering Act [225 ILCS 325/9 ~~12~~].

"Rangeland" means land on which the natural potential (climax) plant cover is principally native grasses, forbs, and shrubs valuable for forage. This land includes natural grasslands and savannahs, such as prairies, and juniper savannahs, such as brushlands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

"Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

"Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

"Reclamation" means those actions which these regulations require to restore mined land to a post-mining land use which the Department has approved. These actions do not include subsidence control measures conducted in the shadow area to restore damaged land to pre-mining capability.

"Recurrence interval" means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the ten~~(10)~~-year, ~~twenty-four (24)~~-hour precipitation event would be that ~~twenty-four (24)~~-hour precipitation event expected to occur on the average once in ten ~~(10)~~ years.

"Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by Department-approved crop production methods. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

"Refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material.

"Regional director" means Regional Director of the Federal Office of Surface Mining Reclamation and Enforcement or Regional Director of the Federal Office of Surface Mining Reclamation and Enforcement's

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

representative.

"Regulatory program" means Illinois' permanent regulatory program which the Office of Surface Mining Reclamation and Enforcement approved and set forth in 30 CFR 913.1-913.16 (1994). 30 CFR 913.1-913.16 do not include any subsequent amendments or editions.

"Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

"Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

"Responsible land management" means that combination of preparation, maintenance, fertilization and tilling of land capable of producing row crops which would be practiced by a person in the business of producing row crops on unmined land in the same region on the same, or similar, soil type as the mined land being managed, which practices can reasonably be expected to continue after mining and reclamation are completed, as determined by the Department.

"Road" means a surface right-of-way for purposes of travel by land vehicles used in surface coal mining and reclamation operations or coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

"Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces.

"Secretary" means the Secretary of the Interior or the Secretary's representative.

"Sedimentation pond" means an impoundment used to remove solids from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

"Shadow area" means any area beyond the limits of the permit area in which underground mine workings are located. This area includes all resources above and below the coal that are protected by the State Act

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

that may be adversely impacted by underground mining operations including impacts of subsidence.

"Significant forest cover" means an area where the plant community consists predominantly of trees and other woody vegetation.

"Significant, imminent environmental harm to land, air or water resources" means:

An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life;

An environmental harm is imminent if a condition, practice, or violation exists which:

Is causing such harm; or

May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under Section 8.06(c) of the State Act [225 ILCS 720/8.06(c)].

An environmental harm is significant if that harm is appreciable and not immediately reparable.

"Siltation structure" means a device, or devices, used to remove, collect or otherwise control runoff so that resulting outflow will meet applicable effluent standards.

"Slope" means average inclination of a surface measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v: 5h). It may also be expressed as a percent or in degrees.

"Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four ~~(4)~~ master soil horizons are:

A horizon. The uppermost mineral layer, often called the surface soil or topsoil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

E horizon. The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from the underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

B horizon. The layer that typically is immediately beneath the A and E horizons and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

C horizon. The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

"Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in 62 Ill. Adm. Code 1785.17(c)(1).

"Spoil" means overburden that has been removed during surface coal mining operations.

"Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

"State Act" means the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

"State regulatory program" means the Illinois program which the Secretary approved on June 1, 1982 pursuant to 30 CFR 732.1 through 732.15.

"State violation notice" means a violation notice issued by a state regulatory authority or by another agency or instrumentality of State government.

"Steep slope" means any slope of more than ~~twenty~~ (20) degrees or such lesser slope as the Department may designate after consideration of such regional characteristics as soil and climate.

"Substantially disturb" means, for purposes of coal exploration, to impact significantly upon land, air or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

"Substantial legal and financial commitments in a surface coal mining operation" means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or of the right to mine it without an existing mine alone, as described in the above example, are not sufficient to constitute substantial legal and financial commitments.

"Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

"Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over the coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

"Surface coal mining and reclamation operations", or "mining and reclamation operations", means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term "surface coal mining operations".

"Surface coal mining operations", or "mining operations" means:

Activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of Section 516 of the Federal Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce, or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting; in situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine-site, provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

not exceed ~~sixteen--and-two-thirds~~ ~~(~~ 16 2/3~~)~~ ~~per-centum~~ of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 512 of the Federal Act; and provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

The areas upon which the activities described in the first paragraph of this definition occur or where those activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

"Surface mining operations" means activities conducted on the surface of lands in connection with a surface coal mine or surface operations. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, coal recovery from coal waste disposal areas, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal at or near the mine site; and the areas on which such activities occur or where such activities disturb the natural land surface. Such areas include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities. (Section 1.03(a)(24) of the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720/1.03(a)(24)].)

"Suspended solids or nonfilterable residue, expressed as milligrams per liter", means any materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR 136).

"Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and which the Department has not approved to remain after reclamation.

"Temporary impoundment" means an impoundment which is used during coal exploration or surface coal mining and reclamation operations and which the Department has not approved to remain after reclamation.

"Ton" means ~~two-thousand-(~~ 2000~~)~~ pounds avoirdupois (.90718 metric ton).

"Topsoil" means the A and E soil horizon layers of the four ~~(4)~~ master soil horizons.

"Toxic - forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to living organisms or uses of water.

"Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill or injure, or impair living organisms commonly present in the area that might be exposed to it.

"Transfer, assignment or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit which the Department issued.

"Underground development waste" means waste rock mixtures resulting from development of areas for underground mining activities.

"Underground mining activities" means a combination of:

Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

Underground operations such as underground construction, operation, and reclamation of shafts, edits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

"Underground mining operations" means:

the underground excavation of coal; and

surface operations incident to the underground extraction of coal, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas on which are sited support facilities including hoist and ventilation ducts, areas used for the storage and disposal of waste, and areas on which materials incident to underground mining operations are placed; and

underground operations incident to underground excavation of coal, such as underground construction, operation, and reclamation of shafts, edits, underground support facilities, in situ processing, and underground mining, hauling, storage, or blasting. {Section 1.03(a)(26) of the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720/1.03(a)(26)]~}

"Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of the operator's permit or any requirement of the State Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit of the State due to indifference, lack of diligence, or lack of reasonable care. {Section 1.03(a)(27) of the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720/1.03(a)(27)]~}

"Valid existing rights" means:

Except for haul roads, that a person possesses valid existing rights for an area protected under Section 7.01 of the State Act [225 ILCS 720/7.01] on August 3, 1977, if the application of any of the prohibitions contained in that Section to the property interest that existed on that date would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Section 15 of the Illinois Constitution of 1970 or both.

For haul roads:

A recorded right of way, recorded easement or a permit for a coal haul road recorded as of August 3, 1977, or at the time of the designation of an area, as to which a conflict is alleged, as part of a national system listed in Section 7.01 of the State Act, or at the time of the coming into existence, within the prohibited distance of a structure, road, cemetery, or other activity listed in Section 7.01 of the State Act; or

Any other road in existence as of August 3, 1977, or at the time of the designation of an area as to which a conflict is alleged, as part of a national system listed in Section 7.01 of the State Act, or at the time of coming into existence, within the prohibited distance of a structure, road, cemetery or other activity listed in Section 7.01 of the State Act.

Where an area comes under the protection of Section 7.01 of the State Act after August 3, 1977, valid existing right shall be found if:

On the date the protection comes into existence, a validly authorized surface coal mine operation exists on that area; or

The prohibition caused by Section 7.01 of the State Act, if applied to the property interest that exists on the date the protection comes into existence, would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution or Article 1, Section 15 of Illinois Constitution of 1970, or both.

Interpretation of the terms of the document relied upon to establish valid existing rights shall be based either upon Illinois case law concerning interpretation of documents conveying mineral rights or, where Illinois case law is lacking, upon the usage and custom at the time and place where it came into existence and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same underground or surface mining activities for which the applicant claims a valid existing right.

"Valid fill" means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than ~~twenty~~ (20) degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (~~1~~0) degrees.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

"Violation notice" means any written notification, from a governmental entity, whether by letter, memorandum, judicial or administrative pleading, or other written communication, of a violation of the Act; any federal regulation promulgated pursuant thereto; a State program; or any federal or state law or regulation pertaining to air or water environmental protection in connection with a surface coal mining operation. It includes, but is not limited to, a notice of violation; an imminent harm cessation order; a failure-to-abate cessation order; a final order, bill or demand letter pertaining to a delinquent civil penalty; a bill or demand letter pertaining to delinquent abandoned mine reclamation fees; and a notice of bond forfeiture, where one or more violations upon which the forfeiture was based have not been corrected.

"Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

"Wetland" means land that has a predominance of hydric soils (soils which are usually wet and where there is little or no free oxygen) and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation (plants typically found in wet habitats) typically adapted for life in saturated soil conditions. Areas which are restored or created as the result of mitigation or planned construction projects and which function as a wetland are included within this definition even when all three wetland parameters are not present.

"Willful violation" means a deliberate act or omission which violates the State Act, these regulations, or any permit condition which the State Act requires.

(Source: Amended at 22 Ill. Reg. 20169, effective NOV 5 1998)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Permanent Program Performance Standards--Underground Mining Activities

2) Code Citation: 62 Ill. Adm. Code 1817

3)

Section Number:	Adopted Action:
1817.46	Amend
1817.49	Amend
1817.61	Amend
1817.62	Amend
1817.66	Amend
1817.67	Amend
1817.83	Amend
1817.116	Amend
1817.117	Amend

4) Statutory Authority: Implemented and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720]

5) Effective Date of Amendments: November 5, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this amendment contain incorporations by reference? No

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal published in Illinois Register: 22 Ill. Reg. 5235 (March 20, 1998)

10) Has JCAR issued a Statement of Objection to these rules? No

11) Difference(s) between proposal and final version:

a) In the Authority note, the "Ill. Rev. Stat." has been deleted.

b) In the Source note, "19 Ill. Reg. 1993, effective January 19, 1996" has been changed to "20 Ill. Reg. 1993, effective January 19, 1996".

c) In Section 1817.46(a)(3), "state" has been capitalized.

d) In Section 1817.49(a)(3)(B), "378" has been stricken and replaced with "IL 278" and "April 1987" has been stricken and replaced with "June 1992".

e) In Section 1817.62(e), "30 days of" has been changed to "30 days

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

after".

f) In Section 1817.83(c)(2), "percent" has been changed to "%"; in subsection (c)(4), "the addition of" has been deleted and "(c)(4)" has been added after "This subsection"; in subsection (d), the last sentence has been moved down to "A)" and the remainder has been restructed.

g) In Section 1817.116(a)(1), "Sections" has been stricken and replaced with "this Section" and "Section" has been added before "1817.117"; a new subsection (3)(G) has been added as follows:

"G) Other Management Practices

The Department shall approve the use of deep tillage for prime farmland and high capability land as a beneficial practice that will not restart the five year period of responsibility, if the following conditions are met:

i) The permittee has submitted a request to use the practice and has identified the field that will be deep tilled;

ii) One or more hay crops, or other acceptable row crops, have been grown or will be grown to dry out the subsoil prior to deep tilling the field; and

iii) The Department has determined that the use of deep tillage will be beneficial to the soil structure and long term crop production of the field and the benefits will continue well beyond the responsibility period.

The Department shall notify the permittee in writing of its decision. Such written notice shall be in the form of an inspection report or other document issued by the Department."

h) In Section 1817.117(d), "foot" has been changed to "feet"

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this amendment replace an emergency rule currently in effect? No

14) Are there any amendments pending of this Part? No

15) Summary and Purpose of Amendment:

Section 1817.46(a)(3) has been changed because the Illinois Department of

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

Natural Resources, Office of Mines and Minerals (Department), was notified by the federal Office of Surface Mining (OSM) that the existing regulation was less effective than its federal counterpart as required by the federal Surface Mining Control and Reclamation Act. In accordance with 30 CFR 732.17(f)(1), the Department was instructed to provide program amendments to correct its defective regulations.

Section 1817.49(a)(3)(B) has been corrected to change the Soil Conservation Service to the Natural Resources Conservation Service.

Section 1817.61(a) is proposed to clarify the intent of this subsection. The current version refers to the initial rounds of slopes and shafts. The proposed version defines the initial rounds to be those within 50 vertical feet of the original ground surface.

Section 1817.62(d) is amended to ensure consistent terminology and wording throughout the regulations.

Section 1817.66(d) allows the owner of a utility to waive the set-back distance of 100 feet. This revision would allow blasting activities within 100 feet of a utility only if the owner has granted such a waiver.

Sections 1817.67(c), (e), (f), and (g): Revisions to these subsections are strictly revisions to the format structure without any substantive revisions. The revisions to Section 1816.67(e)(2) clarify the intent of this subsection. In the current version, a few key words are missing. The revisions are editorial in nature.

Section 1817.83 has been revised to clarify that coal waste deposited in slurry ponds is subject to the treating and/or covering requirements. In addition, it is clarified in this subsection that the Department has the authority to require acid neutralization prior to the covering of the waste with four feet of the best available material.

Sections 1817.116 has been changed to correct the address of the Land Reclamation Division. The Illinois Department of Natural Resources, Office of Mines and Minerals (Department), was notified by the federal Office of Surface Mining (OSM) that an existing regulation in Section 1817.116 (a)(2)(F) was less effective than its federal counterpart as required by the federal Surface Mining Control and Reclamation Act. In accordance with 30 CFR 732.17 (f)(1), the Department was instructed to provide program amendments to correct its defective regulations. In addition, provisions were added to incorporate the updated federal performance standards for previously mined areas and to correct out dated agency addresses.

Section 1817.117(a)(1) provides that the sampling techniques for measuring tree and shrub stocking success shall use a 90 percent statistical

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

confidence interval (i.e., one-sided t test with a 0.10 alpha error). There is a direct relationship between the t value and the confidence interval. When the number of sample plots (degrees of freedom) increases, the value of t decreases. The one-tailed t value at 0.10 alpha error with 120 degrees of freedom equals 1.289. However, with an infinite number of degrees of freedom, the t value equals 1.282. Therefore, statistically, we tend to not gain much survey accuracy beyond 120 samples (plots). Based on this, using 200 samples as the highest number of samples used on areas of 50 acres or larger is justifiable. The Department uses a 1/160 acre plot size for tree and shrub sampling. Sampling 2.5 percent of a 50 acre area would result in 200 plots being used. In accordance with the current formula, the number of plots needed to sample areas of 50 acres or less would not change. Using fewer plots on tracts of land larger than 50 acres would result in considerable personnel time savings and still provide statistically accurate results.

16) Information and questions regarding this adopted amendment shall be directed to:

Karen Jacobs, Legal Counsel
Department of Natural Resources
524 South Second Street
Springfield, IL 62701
(217)782-1809

The full text of the Adopted Amendments begins on the next page:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

TITLE 62: MINING
CHAPTER 1: DEPARTMENT OF NATURAL RESOURCES

PART 1817
PERMANENT PROGRAM PERFORMANCE STANDARDS--
UNDERGROUND MINING OPERATIONS

Section
1817.11 Signs and Markers
1817.13 Casing and Sealing of Exposed Underground Openings: General Requirements
1817.14 Casing and Sealing of Underground Openings: Temporary
1817.15 Casing and Sealing of Underground Openings: Permanent
1817.21 Topsoil: General Requirements (Repealed)
1817.22 Topsoil and Subsoil
1817.23 Topsoil: Storage (Repealed)
1817.24 Topsoil: Redistribution (Repealed)
1817.25 Topsoil: Nutrients and Soil Amendments (Repealed)
1817.41 Hydrologic Balance Protection
1817.42 Hydrologic Balance: Water Quality Standards and Effluent Limitations
1817.43 Diversions
1817.44 Hydrologic Balance: Stream Channel Diversions (Repealed)
1817.45 Hydrologic Balance: Sediment Control Measures
1817.46 Hydrologic Balance: Siltation Structures
1817.47 Hydrologic Balance: Discharge Structures
1817.48 Hydrologic Balance: Acid - Forming and Toxic - Forming Materials (Repealed)
1817.49 Impoundments
1817.50 Hydrologic Balance: Underground Mine Entry and Access Discharges (Repealed)
1817.52 Hydrologic Balance: Surface and Ground Water Monitoring (Repealed)
1817.53 Hydrologic Balance: Transfer of Wells (Repealed)
1817.55 Hydrologic Balance: Discharge of Water Into an Underground Mine (Repealed)
1817.56 Post - Mining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments and Treatment Facilities
1817.57 Hydrologic Balance: Stream Buffer Zones
1817.59 Coal Recovery
1817.61 Use of Explosives: General Requirements
1817.62 Use of Explosives: Pre - Blasting Survey
1817.64 Use of Explosives: General Performance Standards
1817.65 Use of Explosives: Surface Blasting Requirements (Repealed)
1817.66 Use of Explosives: Blasting Signs, Warnings, and Access Control
1817.67 Use of Explosives: Control of Adverse Effects
1817.68 Use of Explosives: Records of Blasting Operations
1817.71 Disposal of Excess Spoil: General Requirements
1817.72 Disposal of Excess Spoil: Valley Fills/Head-of-Hollow Fills

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1817.73 Disposal of Underground Development Waste and Excess Spoil: Head-of-Hollow Fills (Repealed)
1817.74 Disposal of Excess Spoil: Durable Rock Fills
1817.75 Disposal of Excess Spoil: Preexisting Benches
1817.81 Coal Mine Waste: General Requirements
1817.82 Coal Processing Waste Banks: Site Inspection (Repealed)
1817.83 Coal Mine Waste: Refuse Piles
1817.84 Coal Mine Waste: Impounding Structures
1817.85 Coal Processing Waste Banks: Construction Requirements (Repealed)
1817.86 Coal Processing Waste: Burning (Repealed)
1817.87 Coal Mine Waste: Burning and Burned Waste Utilization
1817.88 Coal Processing Waste: Return to Underground Workings (Repealed)
1817.89 Disposal of Noncoal Mine Wastes
1817.91 Coal Processing Waste: Dams and Embankments: General Requirements (Repealed)
1817.92 Coal Processing Waste: Dams and Embankments: Site Preparation (Repealed)
1817.93 Coal Processing Waste: Dams and Embankments: Design and Construction (Repealed)
1817.94 Coal Processing Waste: Time Requirement for Completion of Covering (Repealed)
1817.95 Stabilization of Surface Areas
1817.97 Protection of Fish, Wildlife and Related Environmental Values
1817.99 Slides and Other Damage
1817.100 Contemporaneous Reclamation and Subsidence Control
1817.101 Backfilling and Grading: General Requirements
1817.102 Backfilling and Grading: General Grading Requirements
1817.103 Backfilling and Grading: Covering Coal and Acid- and Toxic-forming Materials (Repealed)
1817.106 Backfilling and Grading: Previously Mined Areas
1817.107 Backfilling and Grading: Steep Slopes
1817.111 Revegetation: General Requirements
1817.112 Revegetation: Use of Introduced Species (Repealed)
1817.113 Revegetation: Timing
1817.114 Revegetation: Mulching and Other Soil Stabilization Practices
1817.115 Revegetation: Grazing (Repealed)
1817.116 Revegetation: Standards for Success
1817.117 Revegetation: Tree and Shrub Vegetation
1817.121 Subsidence Control
1817.122 Subsidence Control: Public Notice
1817.124 Subsidence Control: Surface Owner Protections (Repealed)
1817.126 Subsidence Control: Buffer Zones (Repealed)
1817.131 Cessation of Operations: Temporary
1817.132 Cessation of Operations: Permanent
1817.133 Post-Mining Land Capability
1817.150 Roads: General
1817.151 Primary Roads
1817.180 Utility Installations

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1817.181 Support Facilities
1817.182 Minor Underground Mine Facilities Not at or Adjacent to the Processing or Preparation Facility or Area
1817.190 Affected Acreage Map

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; amended at 6 Ill. Reg. 15024, effective December 30, 1982; codified at 8 Ill. Reg. 8230; amended at 9 Ill. Reg. 13315, effective October 10, 1985; amended at 10 Ill. Reg. 9606, effective July 1, 1986; amended at 11 Ill. Reg. 8250, effective July 1, 1987; amended at 14 Ill. Reg. 11855, effective January 1, 1991; amended at 15 Ill. Reg. 17239, effective January 1, 1992; amended at 17 Ill. Reg. 11031, effective July 1, 1993; amended at 20 Ill. Reg. 1993, effective January 19, 1996; amended at 22 Ill. Reg. 20197, effective NOV 5 1998.

Section 1817.46 Hydrologic Balance: Siltation Structures

a) Definitions. For the purpose of this Section only:
   1) Siltation structure means a sedimentation pond, a series of sedimentation ponds, or other treatment facility.
   2) Disturbed area shall not include those areas:
      A) In which the only underground mining activities include diversion ditches, siltation structures, or roads that are designed, constructed, and maintained in accordance with this Part; and
      B) For which the upstream area is not otherwise disturbed by the permittee.
   3) Other treatment facilities means any chemical treatments, such as flocculation, or mechanical structures, such as clarifiers, that have a point-source discharge and that are utilized to prevent additional contributions of suspended solids to stream flow or runoff outside the permit area, or to comply with all applicable State and federal water quality laws and regulations.

b) General Requirements.
   1) Additional contributions of suspended solids and sediment to stream flow or runoff outside the permit area shall be prevented to the extent possible using the best technology currently available.
   2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area, except as provided in subsection (b)(5) or (e).
   3) Siltation structures for an area shall be constructed before beginning any underground mining activities in that area and, upon construction, shall be sealed by a qualified registered professional engineer to be constructed as designed and as

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

approved in the reclamation plan.

4) Any siltation structure which impounds water shall be designed, constructed, and maintained in accordance with Section 1817.49.

5) Siltation structures shall be maintained until removal is authorized by the Department and the disturbed area has been stabilized and revegetated. In no case shall the structure be removed sooner than two ~~(2)~~ years after the last augmented seeding.

6) When a siltation structure is removed, the land on which the siltation structure was located shall be regraded and revegetated in accordance with the reclamation plan and Sections 1817.111 through 1817.117. Sedimentation ponds approved by the Department for retention as permanent impoundments shall be exempted from this requirement.

7) Any point-source discharge of water from underground workings to surface waters which does not meet the effluent limitations of Section 1817.42 shall be passed through a siltation structure before leaving the permit area.

8) The Department encourages the retention of sedimentation ponds which will receive drainage from agricultural areas in the post-mining land use plan.

c) Sedimentation ponds.

1) When used, sedimentation ponds shall:

A) Be used individually or in series;

B) Be located as near as possible to the disturbed area and out of perennial streams unless approved by the Department in accordance with Section 1817.57; and

C) Be designed, constructed, and maintained to:

i) Provide adequate sediment storage volume;

ii) Provide adequate detention time to allow the effluent from the ponds to meet effluent limitations specified in Section 1817.42;

iii) Contain or treat the ten ~~(10)~~ year, ~~twenty-four-(~~ 24~~)~~ hour precipitation event ("design event") unless a lesser design event is approved by the Department based on terrain, climate, other site specific conditions, and on a demonstration by the permittee that the effluent limitations of Section 1817.42 will be met;

iv) Provide a nonclogging dewatering device adequate to maintain the detention time required under subsection (c)(1)(C)(ii);

v) Minimize, to the extent possible, short circuiting;

vi) Provide periodic sediment removal sufficient to maintain adequate volume for the design event;

vii) Ensure against excessive settlement;

viii) Be free of sod, large roots, frozen soil, and acid- or toxic-forming coal processing waste; and

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

ix) Be compacted properly.

2) Sedimentation pond discharge structures shall be designed according to the following:

A) Sedimentation ponds meeting the size or other qualifying criteria of 30 CFR 77.216(a) (1994) shall comply with all the requirements of 30 CFR 77.216 (1994) and shall have principal and emergency spillways that in combination will safely pass a ~~one--hundred--(~~ 100~~)~~ year, six ~~(6)~~ hour precipitation event; and

B) Sedimentation ponds not meeting the size or other qualifying criteria of 30 CFR 77.216(a) (1994) shall provide a combination of principal and emergency spillways that will safely discharge a ~~twenty-five--(~~ 25~~)~~ year, six ~~(6)~~ hour precipitation event. Such ponds may use a single spillway if the spillway:

i) Is an open channel of nonerodable construction and capable of maintaining sustained flows; and

ii) Is not earth- or grass-lined.

30 CFR 77.216 (1994) does not include any later amendments or editions.

d) Other treatment facilities.

1) Other treatment facilities shall be designed to treat the ten ~~(10)~~ year, ~~twenty-four-(~~ 24~~)~~ hour precipitation event unless a lesser design event is approved by the Department based on terrain, climate, other site-specific conditions, and a demonstration by the permittee that the effluent limitations of Section 1817.42 will be met.

2) Other treatment facilities shall be designed in accordance with the applicable requirements of subsection (c).

e) Exemptions. Exemptions to the requirements to pass all drainage from disturbed areas through a siltation struction may be granted if the disturbed drainage area within the total disturbed area is small; and

1) Alternate sediment control measures as described in Section 1817.45(b) are used in lieu of a siltation structure, and the permittee demonstrates that siltation structures are not necessary for drainage from the disturbed area to meet the effluent limitations and water quality standards for the receiving waters set forth in Section 1817.42; or

2) The permittee demonstrates that siltation structures and alternate sediment control measures are not necessary for drainage from the disturbed drainage areas to meet the effluent limitations and water quality standards for the receiving waters set forth in Section 1817.42.

20197

(Source: Amended at 22 Ill. Reg. _____, effective NOV 2 1998)

Section 1817.49 Impoundments

a) The requirements of this subsection apply to both temporary and permanent impoundments.

1) Impoundments meeting the size and other qualifying criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 (1991) and this Section. 30 CFR 77.216 does not include any later editions or amendments. The plan required to be submitted to the District Manager of the Mine Safety and Health Administration (MSHA) under 30 CFR 77.216 shall also be submitted to the Department as part of the permit application, insofar as the MSHA informational design standard requirements are duplicative of the requirements of 62 Ill. Adm. Code 1784. In addition, the operator shall submit to the Department any certification issued by MSHA with respect to the design plan.

2) The design of impoundments shall be sealed in accordance with 62 Ill. Adm. Code 1784.16(a) as designed to meet the requirements of this Part using current, prudent engineering practices. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

3) Stability.

A) An impoundment meeting the size or other criteria of 30 CFR 77.216(a) or located where failure would be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

B) Impoundments not meeting the size or other criteria of 30 CFR 77.216(a), except for a coal mine waste impounding structure, and located where failure would not be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions, or meet the design, construction and maintenance requirements of U.S. Natural Resources ~~Soil~~ Conservation Service Practice Standard IL 278 ~~378~~, "Ponds," June 1992 ~~April--1987~~. Practice Standard 378 is hereby incorporated by reference and does not include later editions or amendments.

4) Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden decreases in storage volume.

5) Foundations.

A) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

B) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

6) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

7) Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

8) Impoundments shall include a combination of principal and emergency spillways which shall be designed and constructed to safely pass the design precipitation event specified in subsection (b) or (c).

9) Inspections. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments, as evidenced by the placement of a registered professional engineer's seal on the inspection report.

A) Impoundments meeting the size or other criteria of 30 CFR 77.216(a) shall be inspected, examined and certified in accordance with 30 CFR 77.216. Annual status reports required under 30 CFR 77.216-4 shall be submitted to the Department within 30 days after the reporting period.

B) All other impoundments shall be inspected at least quarterly during construction, provided at least one ~~(1)~~ inspection is conducted for impoundments completed in less than one ~~(1)~~ quarter, and upon completion of construction. The qualified registered professional engineer shall submit to the Department, within ~~thirty-(~~ 30~~)~~ days after each inspection, a sealed report that the impoundment has been constructed as designed and in accordance with the approved plan and these regulations.

C) A copy of the reports required in subsections (a)(9)(A) and (B) above, and the examination reports required in subsection (a)(10) below, shall be retained at or near the mine site. The Department may approve reports being retained at a different location if there is no permanent mine office.

10) Impoundments which do not meet the size or other qualifying criteria of 30 CFR 77.216(a) shall be examined at least quarterly by a qualified person designated by the permittee for appearances of instability, structural weakness or other hazardous conditions. At least one of the quarterly examinations conducted during the calendar year shall be sealed by a qualified registered professional engineer and shall include a discussion of any appearances of instability, structural weakness or other

hazardous conditions, and any other aspects of the structure affecting stability, and a statement indicating the pond has been maintained in accordance with the approved plan and these regulations. This examination shall be conducted during the period of October 1 through December 31 of each calendar year. The sealed examination report shall be submitted to the Department within 30 days of the examination. Impoundment examinations shall be conducted until the impoundment has been removed or until final bond release in accordance with 62 Ill. Adm. Code 1800.40. If the operator can demonstrate that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm, the following impoundments shall be exempt from all examination requirements of this subsection following approval by the Department:

A) Impoundments that are completely incised;

B) Water impounding structures that impound water to a design elevation no more than five ~~(5)~~ feet above the upstream toe of the structure and that can have a storage volume of not more than ~~twenty--(~~ 20~~)~~ acre-feet; provided the exemption request is accompanied by a report sealed by a registered professional engineer licensed in the State of Illinois, accurately describing the hazard potential of the structure. Hazard potential must be such that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm. The report shall be field verified by the Department prior to approval and periodically thereafter. The Department may terminate the exemption if so warranted by changes in the area downstream of the structure or in the structure itself; and

C) Impoundments that do not facilitate mining or reclamation including, but not limited to, sewage lagoons, landscaping ponds, pools or wetlands in replaced stream channels, existing impoundments not yet used to facilitate mining, ephemeral waterbodies, active mining pits and differential settlement pools.

11) If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the Department of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Department shall be notified immediately. The Department shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

b) Permanent impoundments. A permanent impoundment of water may be created, if authorized by the Department in the approved permit, based upon the following demonstration:

1) The size and configuration of the impoundment is adequate for its intended purposes;

2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet water quality standards set forth in Section 1817.42, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below water quality standards set forth in Section 1817.42;

3) The water level will be sufficiently stable and be capable of supporting the intended use;

4) Final grading will provide for adequate safety and access for proposed water users;

5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses;

6) The impoundment will be suitable for the approved post-mining land use;

7) The impoundment perimeter slopes shall be consistent with the intended use of the impoundment, not be steeper than the angle of repose and comply with subsection (a)(3). Where surface runoff enters the impoundment area, the side slope shall be protected against erosion.

A) Runoff from above the slope shall be diverted to erosion free outlets.

B) Grading of slopes shall be scheduled to be completed at the onset of the most favorable seeding period;

8) Embankment ponds, those having embankment heights of three (3) feet or greater above natural ground elevation, shall have outslopes of 1v:2h or less and interior slopes to the normal pool elevation of 1v:2h or less;

9) Permanent impoundments not meeting the size or other qualifying criteria of 30 CFR 77.216(a) shall be provided with a spillway that will safely discharge a ~~twenty-five-(~~ 25~~)~~ year, six ~~(6)~~ hour precipitation event, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil type. Permanent impoundments meeting the size or other criteria of 30 CFR 77.216(a) shall be provided with a spillway that will safely discharge a ~~one-hundred-(~~ 100~~)~~ year, six ~~(6)~~ hour precipitation event, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil type;

10) In lieu of the combination principal and emergency spillway requirements of Section 1817.49(a)(8), an impoundment may have a single spillway configured as set forth in subsections (b)(10)(A) and ~~(b)(10)~~ (B) that is designed and constructed to safely pass the applicable design precipitation specified in subsection (b)(9). The Department shall approve a single open-channel

spillway that is:

A) Of nonerodible construction and designed to carry sustained flows; or

B) Earth- or grass-lined and designed to carry short-term infrequent flows at non-erosive velocities where sustained flows are not expected.

c) Temporary impoundments.

1) Temporary impoundments not meeting the size or other qualifying criteria of 30 CFR 77.216(a) shall be provided with a spillway that will safely discharge a ~~twenty-five-(~~ 25~~)~~ year, six ~~(~~6~~)~~ hour precipitation event or such larger event as may be required by the Department based on factors such as terrain, topography and soil type. Temporary impoundments meeting the size or the other criteria of 30 CFR 77.216(a) shall be provided with a spillway that will safely discharge a ~~one-hundred-(~~ 100~~)~~ year, six ~~(~~6~~)~~ hour precipitation event, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil type.

2) In lieu of the combination principal and emergency spillway requirements of Section 1817.49(a)(8), an impoundment may have either:

(A) A single spillway configured as set forth in subsection (c)(2)(A)(i) or ~~(c)(2)(A)~~(ii) that is designed and constructed to safely pass the applicable design precipitation specified in subsection (c)(1). The Department shall approve a single open-channel spillway that is:

i) Of nonerodible construction and designed to carry sustained flows; or

ii) Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected; or

(B) Sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer in accordance with 62 Ill. Adm. Code 1784.16(a) that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current prudent engineering practices. Impounding structures relying on this method to control runoff shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

i) In the case of an impoundment meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event as specified by the Department.

ii) In the case of an impoundment not meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of a 100-year 6-hour event, or greater event as specified by the Department.

(Source: Amended at 22 Ill. Reg. 20197, effective NOV 5 1998)

Section 1817.61 Use of Explosives: General Requirements

a) Sections 1817.61 through 1817.68 apply only to surface blasting activities incident to undergoing mining, including, but not limited to, initial rounds of slopes and shafts that are within 50 vertical feet of the original ground surface.

b) Each person who conducts surface mining activities shall comply with all applicable State and Federal laws in the use of explosives.

c) All blasting operations shall be conducted by persons certified by the Department in accordance with 62 Ill. Adm. Code 1850.

d) Blast design.

1) An anticipated blast design shall be submitted if blasting operations will be conducted within:

A) ~~One-thousand-(~~ 1,000~~)~~ feet of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area; or

B) ~~Five--hundred--(~~ 500~~)~~ feet of an active or abandoned underground mine.

2) The blast design may be presented as part of the permit application or at a time, before the blast, approved by the Department.

3) The blast design shall contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable air blast, flyrock, and ground vibration standards in Section 1817.67.

4) The blast design shall be prepared and signed by a certified blaster.

(Source: Amended at 22 Ill. Reg. 20197, effective NOV 5 1998)

Section 1817.62 Use of Explosives: Pre-Blasting Survey

a) At least ~~thirty-(~~ 30~~)~~ days before initiation of blasting in a permit area, the operator shall notify, in writing, all residents or owners

of structures located within one-half ~~(1/2)~~ mile of the permit area how to request a pre-blast or condition survey.

b) Upon written request to the Department and the person who conducts the surface mining activities by a resident or owner of a dwelling or structure that is located within one-half ~~(1/2)~~ mile of any portion of the permitted area, or by the owner of a dwelling or structure at a distance greater than one-half ~~(1/2)~~ mile from the permit areas but within one ~~(1)~~ mile of the blasting area and within an area determined by the Department to be appropriate in a particular situation on the basis of complaints or other information received by the Department, the person who conducts the surface mining activities shall promptly conduct a pre-blasting survey or a condition survey of the dwelling or structure. For any structure where, in accordance with this Section, a survey has been requested by a previous resident or a previous owner and the survey has been conducted by the permittee and copies of the survey report have been provided to the previous owner or resident and the Department, the permittee shall only be required to provide a copy of the previous completed survey report to any new or subsequent owner upon written request by the new or subsequent owner. If a structure is renovated, modified or added to, subsequent to a pre-blast survey or a condition survey, then upon request to the Department a survey of such additions, modifications and renovations shall be performed in accordance with this Section.

c) The survey shall determine the condition of the dwelling or structure and document any pre-blasting or existing damage and other physical factors that could reasonably be affected by the blasting. Structures such as pipelines, cisterns, wells and other water systems warrant special attention such as the review of construction, drilling or completion specifications; however, the assessment of these structures may be limited to surface conditions

d) Any surveys requested more than ten ~~(10)~~ calendar days prior to the planned initiation ~~published-scheduled-beginning~~ of blasting shall be completed by the operator before the start of blasting. If the request is made after the start of blasting the person who conducts the surface mining activity shall conduct a condition survey of the dwelling or structure. A condition survey shall contain information identical to a pre-blasting survey. The intent of this Section is to provide for either a pre-blasting or condition survey only.

e) A written report of the survey shall be prepared and signed by the person who conducted the survey. The report may include recommendations of any special conditions or proposed adjustments to the blasting procedure which should be incorporated into the blasting plan to prevent damage. Copies of the report shall be provided to the person requesting the survey and to the Department within ~~thirty-(~~ 30~~)~~ days after ~~of~~ the the date the survey was completed. If the person requesting the survey disagrees with the results of the survey, he or she may notify, in writing, both the permittee and the Department of the specific areas of disagreement. Instructions as to whom and to

where the written comments on the results of the survey should be forwarded shall be included with the survey report.

(Source: Amended at 22 Ill. Reg. 20197, effective NOV 5 1998)

Section 1817.66 Use of Explosives: Blasting Signs, Warnings, and Access Control

a) Blasting signs shall meet the specifications of Section 1817.11. The operator shall:
   1) Conspicuously display signs reading "Blasting Site" along the edge of any blasting site that comes within ~~one--hundred--(~~ 100~~)~~ feet of any public road right-of-way, and at the point where any other road provides access to the blasting site; and
   2) At all entrances to the permit area from public roads or highways, place conspicuous signs which state "Warning! Explosives in Use" and which clearly list and describe the meaning of the audible blast warning and all-clear signals that are in use, and which explain the marking of blasting sites and charged holes awaiting firing within the permit area.

b) Warning and all-clear signals of different character or pattern that are audible within one-half ~~(1/2)~~ mile of the blast shall be given. Each person within the permit area and each person who resides or regularly works within one-half ~~(1/2)~~ mile of the permit area shall be notified of the meaning of the signals in the blasting notification required in Section 1817.64 ~~schedule~~. The requirement to supply daily notice may be fulfilled by the audible warning signals.

c) Access to the blasting site shall be controlled to prevent the presence of livestock or unauthorized personnel during blasting and until an authorized representative of the person who conducts the surface mining activities has reasonably determined:
   1) That no unusual circumstances, such as imminent slides or undetonated charges, exist; and
   2) That access to and travel in or through the site can be safely resumed.

d) Blasting prohibitions
   1) Blasting shall not be conducted within ~~three-hundred-(~~ 300~~)~~ feet of any building used as a dwelling unless waived by the owner or within ~~three--hundred-(~~ 300~~)~~ feet of a school, church, hospital, or nursing facility.
   2) Blasting shall not be conducted within ~~one-hundred-(~~ 100~~)~~ feet of facilities including, but not limited to, disposal wells, petroleum or gas storage facilities, municipal water storage facilities, fluid-transmission pipelines, or water and sewage lines unless a waiver is obtained from the owner of the facility and submitted to the Department prior to blasting within 100 feet.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

(Source: Amended at 22 Ill. Reg. 20197, effective AUG 5 1998)

Section 1817.67 Use of Explosives: Control of Adverse Effects

a) Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel or availability of ground or surface waters outside the permit area.

b) Air blast limits

1) Air blast shall be controlled so that it does not exceed the values specified below at any dwelling, public building, school, church, or commercial or institutional structure, unless such structure is owned by the person who conducts the surface mining activities and is not leased to any other person. If a building owned by the person conducting surface mining activities is leased to another person, the lessee may sign a waiver relieving the operator from meeting the air blast limitations of this subsection. The waiver shall be submitted to the Department before beginning blasting.

Lower frequency limit of measuring system, Hz +3dB	Maximum level in dB
0.1 Hz or lower--flat response*	134 peak
2.0 Hz or lower--flat response	133 peak
6.0 Hz or lower--flat response	129 peak

* Only when approved by the Department

2) The measuring systems used shall have a flat frequency response of at least ~~two-hundred~~ (200) Hz at the upper end.

3) The person who conducts blasting may satisfy the provisions of subsection (b) by meeting any of the three ~~(3)~~ specifications in the chart in subsection (b)(1).

4) If necessary to prevent damages specified in subsection (a), the Department shall specify lower maximum allowable air blast levels than those of subsection (b)(1) for use in the vicinity of a specific blasting operation.

c) Air blast monitoring

1) When the cube root scaled distance, as defined in subsection (c)(2), to the nearest dwelling, public building, school, church, or commercial or institutional structure has a value less than 350 and when the burden to hole depth ratio is greater than 1.0, or the top stemming height is less than 70% of the burden dimension, the air blast produced by the blast shall be measured, recorded, analyzed, and reported pursuant to subsection (g) and Section 1817.68(b).

~~A) The burden-to-hole-depth-ratio-is-greater-than-1.0,-or~~

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

~~B) The--top--stemming-height-is-less-than-seventy-percent-(70%)-of-the-burden-dimension,-the--air--blast--produced--by--that-blast--shall--be--measured,-recorded,-analyzed,-and-reported-pursuant-to-subsection-(h)-and-Section-1817.68(b).~~

2) Cube root scaled distance equals the distance, in feet, from the blast to a specified location divided by the cube root of the maximum weight of explosives, in pounds, to be detonated in any eight ~~(8)~~ millisecond period.

3) To ensure compliance with the limits contained in this Section, the Department may require an air blast measurement of any or all blasts, and may specify the location of such measurements.

d) Flyrock, including blasted material traveling in the air, or along the ground, shall not be cast beyond the permit boundaries or beyond the area of regulated access required under Section 1817.66(c), or more than one-half the distance to the nearest dwelling or other occupied structure.

e) Ground vibration limits

1) In all blasting operations, except as otherwise authorized in this Section, the maximum peak particle velocity shall not exceed one ~~(1)~~ inch per second at the location of any dwelling, public building, school, church, or commercial or institutional building. At distances greater than ~~five-thousand-(~~ 5,000) feet from the blast to any structures described in this subsection, the maximum allowable peak particle velocity shall not exceed 0.75 inch per second at the locations of the structures described in this subsection. At distances less than ~~three-hundred-(~~ 300) feet from the blast to any structures described in this subsection, the maximum allowable peak particle velocity shall not exceed 1.25 inch per second at the locations of the structures described in this subsection. These limits shall apply separately to each component of motion as defined in subsection (gh). The Department shall reduce peak particle velocity limits if determined necessary to provide damage protection if so recommended in any pre-blast survey or condition survey report provided pursuant to Section 1817.62.

2)~~f)~~ Blasting ~~If-blasting-is~~ shall be conducted to prevent adverse impacts on any underground mine and changes in the course, channel, or availability of ground or surface water outside the permit area. Ground vibration limits, including~~,--then~~ the maximum peak particle velocity limitation of subsection (ed)(1), shall not apply at the following locations;

A)~~1)~~ At structures owned by the person conducting the mining activity, and not leased to another party;

B)~~2)~~ At structures owned by the person conducting the mining activity, and leased to another party, if a written waiver by the lessee is submitted to the Department prior to blasting.

f)~~g)~~ Ground vibration monitoring

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1) When the scaled distance, as defined below, has a value of less than ~~sixty-five--(~~ 65~~)~~ at the nearest dwelling, public building, school, church, or commercial or institutional structure, a seismograph recording shall be made at or near the closest structure requiring protection.

2)~~1)~~ Scaled Distance = The distance, in feet, from the blast to a specified location divided by the square root of the maximum weight of explosives, in pounds, to be detonated in any eight ~~(8)~~ millisecond period.

3)~~2)~~ To ensure compliance with the limits contained in this Section, the Department may require a seismograph recording of any or all blasts and may specify the location at which such recordings are made.

gh) As used herein, seismograph recording or record or air blast recording or record shall mean a visually inspectable cartesian representation of the time history of the particle velocity levels or air blast levels versus time. Time is represented on the "X" axis. The particle velocity is shown by three traces representing mutually perpendicular components of motion. The components are oriented vertically, transversely, and longitudinally to the horizontal direction from the recording location to the location of the blast. The air blast time history is represented by a single trace. The record or recording includes either an analog representation of, or a written description of the vertical scale for the particle velocity traces and the air blast trace. The units for the particle velocity traces and scale are in inches per second. The units for the air blast trace and scale are millibars, pounds per square inch, or decibels. The recording also includes an analog or descriptive time scale. The time units are in seconds.

(Source: Amended at 22 Ill. Reg. 20197, effective NOV 5 1998)

Section 1817.83 Coal Mine Waste: Refuse Piles

Refuse piles shall meet the requirements of Section 1817.81, the additional requirements of this Section, and the requirements of 30 CFR 77.214 and 77.215 (1989). 30 CFR 77.214 and 77.215 (1989) do not include any later amendments or editions.

a) Drainage control.

1) If the disposal area contains springs, natural or man-made water courses, or wet weather seeps, the design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the disposal facility and ensure stability.

2) Uncontrolled surface drainage may not be diverted over the outslope of the refuse pile. Runoff from the areas above the refuse pile and runoff from the surface of the refuse pile shall

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

be diverted into stabilized diversion channels designed to meet the requirements of Section 1817.43 to safely pass the runoff from a ~~one-hundred-(~~ 100~~)~~ year, six ~~(6)~~ hour precipitation event. Runoff diverted from undisturbed areas need not be commingled with runoff from the surface of the refuse pile.

3) Underdrains shall comply with the requirements of Section 1817.71(1)(2).

b) Surface area stabilization. Slope protection shall be provided to minimize erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected from erosion, shall be revegetated upon completion of construction.

c) Placement.

1) All vegetative and organic materials shall be removed from the disposal area prior to placement of coal mine waste. Topsoil shall be removed, segregated and stored or redistributed in accordance with Section 1817.22. If approved by the Department, organic material may be used as mulch, or may be included in the topsoil to control erosion, promote growth of vegetation or increase the moisture retention of the soil.

2) The final configuration of the refuse pile shall be suitable for the approved post-mining land use. Terraces may be constructed on the outslope of the refuse pile if required for stability, erosion control, conservation of soil moisture, or facilitation of the approved post-mining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:1v (~~fifty-(~~ 50~~)~~% ~~percent~~).

3) No permanent impoundments shall be allowed on the completed refuse pile. Small depressions may be allowed by the Department if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation, and if they are not incompatible with stability of the refuse pile.

4) Following final grading of the refuse pile, the coal mine waste shall be covered with a minimum of four ~~(4)~~ feet of the best available nontoxic and noncombustible material, in a manner that does not impede drainage from the underdrains. The Department may allow less than four ~~(4)~~ feet of cover material based on physical and chemical analyses which show that the requirements of Sections 1817.111 through 1817.116 will be met. The Department shall require neutralization material to be added to the coal mine waste if, based on physical and chemical analyses, this material is needed to prevent acid mine drainage. This subsection (c)(4) is also applicable to the reclamation of fine coal waste (slurry) not meeting the definition of refuse piles.

d) Inspections. A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall inspect the refuse pile during construction. The professional engineer or specialist shall be experienced in the construction of similar earth and waste structures.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1) Such inspections shall be made at least quarterly throughout construction and during critical construction periods.
   A) Critical construction periods shall include at a minimum:
      i) Foundation preparation including the removal of all organic material and topsoil;
      ii) Placement of underdrains and protective filter systems;
      iii) Installation of final surface drainage systems; and
      iv) The final graded and revegetated facility.
   B) Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of coal mine waste materials. More frequent inspections shall be conducted if a danger or harm exists to the public health and safety or the environment. Inspections shall continue until the refuse pile has been finally graded and revegetated.
2) The qualified registered professional engineer shall provide a sealed report to the Department promptly after each inspection that the refuse pile has been constructed and maintained as designed and in accordance with the approved plan and 62 Ill Adm. Code 1700 through 1850. The report shall include appearances of instability, structural weakness, and other hazardous conditions.
3) The sealed report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with coal mine waste. If the underdrain system is constructed in phases, each phase shall be sealed separately. The photographs accompanying each sealed report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.
4) A copy of each inspection report shall be retained at or near the mine site.

(Source: Amended at 22 Ill. Reg. 20197, effective NOV 9 1998)

Section 1817.116 Revegetation: Standards for Success

a) Success of Revegetation
   1) Success of revegetation shall be judged in accordance with this Section ~~Sections~~ 1817.116 and Section 1817.117.
   2) Requirements
      A) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the Department in accordance with subsection (a)(2)(C) below.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

      B) The period of extended responsibility shall continue for a period of not less than five ~~(5)~~ full years, except that on lands eligible for remining, the period of responsibility (until September 30, 2004) shall be two ~~(2)~~ full years. Vegetation parameters identified in subsection (a)(1) above shall equal or exceed the approved standard set forth in subsection (a)(3) below.
      C) The Department shall approve selective husbandry practices, excluding irrigation or augmented seeding or augmented fertilization, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the post-mining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal conservation and land use management practices within the region for unmined lands having land uses similar to the approved post-mining land use of the disturbed area, including such practices as diseases, pest, and vermin control; any pruning, reseeding and/or transplanting specifically necessitated by such actions; approved agricultural practices described in the Illinois Agronomy Handbook (1993-94); and those practices which are a part of an approved conservation plan subject to the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 1421 et seq.). On all lands with a post-mining land use other than cropland, any areas reseeded or replanted as a part or result of a normal husbandry practice must be sufficiently small in size and limited in extent of occurrence, or part of a hay management plan which is an agricultural practice described by the Illinois Agronomy Handbook or as part of an approved conservation plan subject to the Food, Agriculture, Conservation and Trade Act of 1990, and the reestablished vegetation must be in place for a sufficient length of time so as not to adversely affect the Department's ability to make a valid determination at the time of bond release as to whether the site has been properly reclaimed to a condition in which it will support a diverse, effective, permanent vegetative cover of the required nature and productivity. The Illinois Agronomy Handbook is published by the University of Illinois-Cooperative Extension Service, Office of Agricultural Communications and Education, 69E Mumford Hall, 1301 West Gregory Drive, Urbana, Illinois 61801. Copies of the Illinois Agronomy Handbook and the Food, Agriculture, Conservation and Trade Act of 1990 are available at the Department's Springfield office located at 524 S. Second Street, Springfield, Illinois 62701-1787 ~~300 West Jefferson,~~

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

~~Suite 300, P.O. Box 19197, Springfield, Illinois 62794-9497.~~

D) Rill and gully repair on cropland-capable reclaimed land will not be considered augmentation if an operator has an approved erosion control plan in place in the field pursuant to 62 Ill. Adm. Code 1823.14(g) or 1825.14(f), and shortly after the first rainfall event after the repair, the Department makes the following determinations:
   i) the area is a minor erosional feature;
   ii) the area is small;
   iii) the erosion is not expected to recur; and
   iv) the area is stable.

   The Department shall notify the permittee in writing whether or not a repair is augmentative. Such written notice shall be in the form of an inspection report or other document issued by the Department.

E) Rill and gully repair on noncropland-capable land will not be considered augmentation if, shortly after the first rainfall event after the repair, the Department makes the following determinations:
   i) the area is a minor erosional feature;
   ii) the area is small;
   iii) the erosion is not expected to recur; and
   iv) the area is stable.

   The Department shall notify the permittee in writing whether or not a repair is augmentative. Such written notice shall be in the form of an inspection report or other document issued by the Department.

F) Augmentation
   ~~i) The five (5) year period of responsibility shall not recommence after deep tillage on areas where the operator has met the revegetation success standards of subsection (a)(3)(E) below.~~
   ~~ii)~~ Wetlands shall be considered augmented when significant alterations are made to the size or character of the watershed, pumping is used to maintain water levels, or neutralizing agents, chemical treatments or fertilizers are applied to the wetland area, except that wetlands managed as wildlife food plot areas using agricultural techniques shall not be considered augmented when normal agricultural husbandry practices, such as routine liming and fertilization, are used. Water level management using permanent water control structures is considered a normal husbandry practice.

G) Other Management Practices

   The Department shall approve the use of deep tillage for prime farmland and high capability land as a beneficial practice that will not restart the 5 year period of responsibility, if the following conditions are met:
   i) The permittee has submitted a request to use the practice and has identified the field that will be deep tilled;
   ii) One or more hay crops, or other acceptable row crops, have been grown or will be grown to dry out the subsoil prior to deep tilling the field; and
   iii) The Department has determined that the use of deep tillage will be beneficial to the soil structure and long term crop production of the field and the benefits will continue well beyond the responsibility period.

   The Department shall notify the permittee in writing of its decision. Such written notice shall be in the form of an inspection report or other document issued by the Department.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

3) Ground cover and production shall be considered equal to the approved success standard when they are not less than ~~ninety (~~ 90~~)~~ **percent** of the success standard. The sampling techniques for measuring success shall use a ~~ninety (~~ 90~~)~~ **percent** statistical confidence interval (i.e., one-sided t test with a 0.10 alpha error). Vegetative ground cover shall be measured using the technique set forth in 62 Ill. Adm. Code 1817.117(d). Standards for success shall be applied in accordance with the approved post-mining land use and, at a minimum, the following conditions:
   A) The vegetative ground cover for areas previously disturbed by mining operations that were not reclaimed to the requirements of 62 Ill. Adm. Code 1800 through 1828, and that are remined or otherwise redisturbed by surface coal mining operations, shall not be less than the greater of 70% or the percentage of ground cover existing before redisturbance, and shall be adequate to control erosion during the last year of the responsibility period;
   B) For areas to be developed for industrial, commercial or residential use less than two ~~(2)~~ years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion and shall not be less than 70%;
   C) For areas designated in the approved reclamation plan as cropland, except those cropland areas subject to 62 Ill. Adm. Code 1823.15, success of revegetation of cropland areas shall be determined in accordance with 62 Ill. Adm. Code 1816.116(a)(4). Crop production shall be considered successful if it is ~~ninety (~~ 90~~)~~ **percent** of that crop production required in 62 Ill. Adm. Code 1816.116(a)(4). Crop production shall be considered successful if it is ~~ninety (~~ 90~~)~~ **percent** of that crop production required in 62

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

Ill. Adm. Code 1816.116(a)(4) with ~~ninety--(~~ 90~~)~~% ~~percent~~ statistical confidence (i.e., one-sided t test with a 0.10 alpha error) for a minimum of any two ~~(2)~~ crop years of a ten ~~(10)~~ year period prior to release of the performance bond, except the first year of the five ~~(5)~~ year responsibility period. During the extended five ~~(5)~~ year responsibility period, erosion from cropland must be minimized using equivalent or better management practices than surrounding unmined cropland. The five ~~(5)~~ year responsibility period shall begin after the last year of augmented seeding, fertilizing, or soil treatment and at the time of the planting of the crop(s) to be grown for the productivity showing or crops grown in rotation. Crop production for proof of productivity purposes shall be initiated within ~~ten--(~~ 10~~)~~ years after completion of backfilling and final grading. All cropland shall be maintained using proper management practices as set forth in subsection (a)(2)(C) until the end of the responsibility period;

D) For areas to be developed for fish and wildlife habitat (including shelter belts), recreation, or forest products land uses, success of revegetation shall be determined on the basis of tree and shrub populations and ground cover. The tree and shrub population and ground cover shall meet the standards described in Section 1817.117;

E) For areas designated as pasture and/or hayland or grazing land in the approved reclamation plan, except for erosion control devices and other structures (i.e., levees, ditches, waterways, impounding structure, etc.) productivity success (tons of grasses and/or legumes per acre) shall be determined in accordance with 62 Ill. Adm. Code 1816.116(a)(4). Productivity shall be considered successful if it is ~~ninety-(~~ 90~~)~~% ~~percent~~ of the productivity required in 62 Ill. Adm. Code 1816.116(a)(4) with ~~ninety-(~~ 90~~)~~% ~~percent~~ statistical confidence (i.e., one-sided t test with a 0.10 alpha error) for a minimum of any two ~~(2)~~ crop years of a ten (10) year period prior to release of the performance bond, except the first year of the five ~~(5)~~ year extended responsibility period. All pasture, hayland and grazing land shall be maintained using proper management practices as set forth in subsection (a)(2)(C) above until the end of the responsibility period. ~~Production for proof of productivity purposes shall also be determined in accordance with Section 1817.117(a)(2).~~ Production for proof of productivity purposes shall be initiated within ten ~~(10)~~ years after completion of backfilling and final grading. Ground cover shall be considered successful if it is ~~ninety (~~ 90~~)~~% ~~percent~~ with ~~ninety--(~~ 90~~)~~% ~~percent~~ statistical confidence (i.e., one sided t test with a 0.10 alpha error) for a minimum of any two ~~(2)~~ years of a ten ~~(10)~~ year period prior to the release of the performance bond, except the first year of the five ~~(5)~~ year extended responsibility period. On cropland-capable land, the Department shall allow the permittee to substitute corn production for hay production. If determined to be a proper management practice in accordance with subsection (a)(2)(C) above, the Department shall allow the permittee to substitute one year of crop production of an allowable crop specified in 62 Ill. Adm. Code 1816.116(a)(4)(D) for one year of hay production on limited capability land; and

F) Non-contiguous areas less than or equal to four acres which were disturbed from activities such as, but not limited to, signs, boreholes, power poles, stockpiles and substations shall be considered successfully revegetated if the operator can demonstrate that the soil disturbance was minor, i.e., the majority of the subsoil remains in place, the soil has been returned to its original capability and the area is supporting its approved post-mining land use at the end of the responsibility period.

4) In order to use the Agricultural Lands Productivity Formula, 62 Ill. Adm. Code 1816.Appendix A, to determine success of revegetation, the requirements of 62 Ill. Adm. Code 1816.116(a)(4) shall apply.

5) Wetland revegetation shall be deemed successful when:

A) The wetland vegetation criteria in the Corps of Engineers Wetlands Delineation Manual (Department of the Army Technical Report Y-87-1, January 1987, published by the Department of the Army, Waterways Experiment Station, Corps of Engineers, P.O. Box 631, Vicksburg, Mississippi 39180-0631) have been achieved following sampling procedures specified in that manual, which does not include any later amendments or editions and is available for inspection and copying at the Department's office located at 524 S. Second Street, Springfield, Illinois 62701-1787 ~~300 West Jefferson, Suite 300, P.O. Box 10137, Springfield, Illinois 62791-0137~~; and

B) Areas designed to support vegetation in the approved plan shall have a minimum areal coverage of 30% ~~percent~~. The testing procedure in Section 1817.117(d)(1) through (3) shall be used to evaluate the extent of cover. Areal cover shall be determined to be present if any approved wetland species is measured at the increment. The percentage of areal cover shall be established for the area tested by taking the total number of measurements where areal cover was determined to be present.

b) The person who conducts underground mining activities shall:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1) Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the Department, to identify if remedial actions are necessary during the applicable period of liability specified in subsection (a); and
2) Permittees shall submit by February 15 of each year a report of reclamation activities conducted during the previous calendar year, which initiate or may alter the responsibility period or are specifically required by the Department to evaluate a normal husbandry practice, using forms provided by the Department. Examples of reclamation activities to be reported and/or evaluated include, but are not limited to, crops used in temporary and permanent seedings, grasses and legumes planted, trees and shrubs planted, soil amendments added, and type and location of augmentation activities. The forms shall be submitted with a copy of the approved post-mining land use and capability map depicting the location of such activities. The map shall be planned as a continuous map so the reclamation activities conducted each year may be added and indicated on the map by the dates the activities were conducted.

(Source: Amended at 22 Ill. Reg. 20197, effective NOV 5 1998)

Section 1817.117 Revegetation: Tree and Shrub Vegetation

a) For areas to be developed for fish and wildlife habitat (including shelter belts), recreation, or forest products land uses, success of vegetation shall be determined on the basis of tree and shrub population and vegetative ground cover. Such parameters are described as follows:
   1) Trees and shrubs that will be used in determining the success of vegetation and the adequacy of plant arrangement shall have utility for the approved post-mining land use. Tree and/or shrub population shall be considered successful if it meets the population required in subsection (b) below with 90% ~~percent~~ statistical confidence (i.e., one-sided t test with a 0.10 alpha error) during the fifth year of the responsibility period or later in the responsibility period. On lands eligible for remining, the period of responsibility (until September 30, 2004) shall be two ~~(2)~~ full years. Trees and shrubs counted in determining such success shall be healthy, e.g., not demonstrating abnormal growth, coloring, leaf drop or disease. At the time of bond release such trees and shrubs shall be alive, and shall have been in place for at least three ~~(3)~~ growing seasons, i.e., three ~~(3)~~ years. Until September 30, 2004, on lands eligible for remining, trees and shrubs need not have been in place for three ~~(3)~~ years; however, such trees and shrubs shall not be counted in determining success during the same calendar year in which they were planted.
   2) Vegetative ground cover shall not be less than required to achieve the approved post-mining land use and shall be adequate to control erosion and shall not be less than 70% during the last year of the responsibility period.
   3) Permanent roads, parking lots and similar impervious structures on the revegetated area shall not require the planting of trees and shrubs or herbaceous ground cover. Erosion control structures, including pond embankments, shall not require the planting of trees and shrubs.
   4) For purposes of this Section, herbaceous species means: grasses, legumes and nonleguminous forbs; woody plants means: woody shrubs, trees and vines; and ground cover means: the area of ground covered by the combined aboveground parts of vegetation and the litter that is produced naturally on site.
   5) For purposes of this Section, normal husbandry and conservation practices shall include pruning, disease, pest, vermin and herbaceous vegetation control including mowing, replanting and rill and gully repairs. The replanting of trees and shrubs in areas described in 62 Ill. Adm. Code 1817.116(a)(2)(C) shall be limited to 20% of the original approved planting rate during the first year of the responsibility period and 10% of the original approved planting rate during the second year of the responsibility period. The repair of rills and gullies shall be limited to those approved as a normal conservation practice under 62 Ill. Adm. Code 1817.116(a)(2)(C), (D) and (E).
b) For areas where woody plants are used for fish and wildlife habitat (including shelter belts), or recreation land uses, the area shall have a minimum population of ~~two-hundred-and-fifty--(~~ 250~~)~~ trees or shrubs per acre. Planting arrangements such as hedgerows, border plantings, clump plantings, shelterbelts, and open herbaceous areas which increase diversity within wildlife areas may be approved by the Department on a case-by-case basis prior to planting such areas. Where woody plants are used for forest products land uses, the area shall have a minimum population of 450 trees or shrubs per acre.
c) For areas planted to trees or shrubs including wildlife habitat (including shelter belts), recreation, and forest products land uses, the sampling procedure for measuring populations is described as follows:
   1) The permittee shall submit a scale drawing or aerial photograph delineating the field(s) to be sampled and the total number of acres in each field. A one ~~(1)~~ inch equals ~~five-hundred-(~~ 500~~)~~ feet or larger scale shall be used. Once field boundaries are established in a submittal, the boundaries shall not be changed unless the Department approves a request in accordance with 62 Ill. Adm. Code 1774.13.
   2) One of the following circular plot sizes shall be selected by the sample enumerator:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

Plot Size/Acres	Radius/Feet
1/160	9.31
1/120	10.7
1/100	11.78
1/90	12.41
1/80	13.17
1/70	14.07
1/60	15.20
1/50	16.65
1/40	18.61
1/30	21.50
1/20	26.33
1/10	37.24
1/5	52.66
1/4	58.88

3) The number of plots needed to sample ~~2.5-percent-of~~ the area will be calculated employing the following formula:

Number of Plots equals 2.5~~%~~ ~~percent~~ multiplied by Sample Area in acres divided by plot size.

4) Based on the number of plots needed to be sampled and plot size, locate transect lines an equal distance apart throughout the area to be sampled. Position individual plots an equal distance apart along transect lines. Determine the total length of all transect lines combined and then divide by the total number of plots needed to be sampled. When an individual plot is positioned within ~~(~~ 60~~)~~ ~~sixty~~ feet of the boundary of the area to be sampled, the location of the plot shall be moved perpendicular to the transect line until the plot is ~~(~~ 60~~)~~ ~~sixty~~ feet from the boundary of the area to be sampled or the greatest distance possible where ~~(~~ 60~~)~~ ~~sixty~~ feet cannot be achieved.
5) Sample each plot for compliance with subsections (a)(1) and (b) and record live trees and/or shrubs and species.
6) Calculate population levels as follows:
   A) Average number of live trees and/or shrubs per plot equals Total Number of live trees and/or shrubs divided by number of plots; and
   B) Number of live trees and/or shrubs per acre equals Average number of live trees and/or shrubs per plot multiplied by plot size denominator.
7) Representatives of the Department shall administer all sampling.

d) Vegetative ground cover shall be measured by the following technique:
1) Twenty ~~(20)~~ random points shall be identified in the area to be tested.
2) A ~~twenty--(~~ 20~~)~~ feet ~~foot~~ engineer's tape shall be extended directly south of each point. If the tape extends beyond the boundary of the area to be tested or extends into an area where herbaceous ground cover has been controlled with herbicides to minimize competition with woody plants, the tape shall be rotated in ~~ninety--(~~ 90~~)~~ degree increments until the entire ~~twenty-(~~ 20~~)~~ feet ~~foot~~ length is within the boundary of the area to be tested or area not treated with the herbicide.
3) A measurement shall be taken at each ~~two-tenths-(~~ .2~~)~~ foot increment directly above or below the tape.
4) Ground cover shall be determined to be present if any vegetation identified in Section 1817.117(a)(4) is measured at the increment.
5) A percentage of ground cover shall be established for the area tested by taking the total number of measurements where ground cover was determined to be present.

(Source: Amended 5 NOV 1998 22 Ill. Reg. 20197, effective _____)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Permanent Program Performance Standards - Surface Mining Activities

2) Code Citation: 62 Ill. Adm. Code 1816

3)

Section Number:	Adopted Action:
1816.46	Amend
1816.49	Amend
1816.64	Amend
1816.66	Amend
1816.67	Amend
1816.83	Amend
1816.116	Amend
1816.117	Amend

4) Statutory Authority: Implemented and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720]

5) Effective Date of Amendments: November 5, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this amendment contain incorporations by reference? No

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal published in Illinois Register: 22 Ill. Reg. 5264 (March 20, 1998)

10) Has JCAR issued a Statement of Objection to these rules? No

11) Difference(s) between proposal and final version:

a) In Section 1816.46(a)(3), "state" has been capitalized.

b) In Section 1816.49(a)(3)(B), "378" has been changed to "IL 278" and "April 1987" has been changed to "June 1992"; in subsection (a)(10), "within 30 days of" has been changed to "within 30 days after".

c) In Section 1816.66(d), "Proximity to buildings and other facilities" has been added as the heading title.

d) In Section 1816.67(c)(1), "of this Section" has been added after "subsection (g)".

e) In Section 1816.83(c)(4), "(c)(4)" has been added after "This

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

subsection".

f) In Section 1816.116(2), a new subsection (G) has been added as follows:

"G) Other Management Practices

The Department shall approve the use of deep tillage for prime farmland and high capability land as a beneficial practice will not restart the five year period of responsibility, if the following conditions are met:

i) The permittee has submitted a request to use the practice and has identified the field that will be deep tilled;

ii) One or more hay crops, or other acceptable row crops, have been grown or will be grown to dry out the subsoil prior to deep tilling the field; and

iii) The Department has determined that the use of deep tillage will be beneficial to the soil structure and long term crop production of the field and the benefits will continue well beyond the responsibility period.

The Department shall notify the permittee in writing of its decision. Such written notice shall be in the form of an inspection report or other document issued by the Department."

g) In Section 1816.116(a)(3)(C), "percent" has been changed to "%"; in subsection (3)(D), "and" has been stricken; in subsection (3)(E), "percent" has been Changed to "%"; in subsection (a)(5)(B), "percent" has been changed to "%".

h) In Section 1816.117, "percent" has been changed to "%"; commas have been added after the word "e.g." and "i.e."; in subsection (c)(3), "percent" has been changed to "%" and all new language has been deleted; in subsection (d), "foot" has been changed to "feet".

i) All numbering has been simplified.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this amendment replace an emergency rule currently in effect? No

14) Are there any amendments pending of this Part? No

15) Summary and Purpose of Amendment:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

Section 1816.46(a)(3) has been changed because the Illinois Department of Natural Resources, Office of Mines and Minerals (Department), was notified by the federal Office of Surface Mining (OSM) that the existing regulation was less effective than its federal counterpart as required by the federal Surface Mining Control and Reclamation Act. In accordance with 30 CFR 732.17(f)(1), the Department was instructed to provide program amendments to correct its defective regulations.

Section 1816.49(a)(3)(B) has been corrected to change the Soil Conservation Service to the Natural Resources Conservation Service.

Section 1816.64(b) adds additional language to emphasize the restriction of nighttime blasting. This is not a new limitation--the change simply clarifies that blasting is not allowed after sunset. Section 1816.64(c) makes the regulation consistent with its federal counterpart. The blasting schedule must be published before beginning a blasting program. The current language requires that the blasting schedule be published at least 30 days but not more than 60 days before blasting starts. The adopted revision requires that the blasting schedule be published at least 10 days but not more than 30 days before blasting starts. Subsection (d) has been deleted from this subsection to ensure consistency with the federal counterpart. The rest of the proposed revisions to this subsection are strictly revisions to the format structure without any substantive revisions.

Section 1816.66(d) allows the owner of a utility to waive the set-back distance of 100 feet. This revision would allow blasting activities within 100 feet of a utility only if the owner has granted such a waiver.

Sections 1816.67(c), (e), (f), and (g): Revisions to these subsections are strictly revisions to the format structure without any substantive revisions. The revisions to Section 1816.67(e)(2) clarify the intent of this subsection. In the current version, a few key words are missing. The revisions are editorial in nature.

Section 1816.83 has been revised to clarify that coal waste deposited in slurry ponds is subject to the treating and/or covering requirements. In addition, it is clarified in this subsection that the Department has the authority to require acid neutralization prior to the covering of the waste with four feet of the best available material.

Sections 1816.116(a)(2)(C) and (a)(5) have been changed to correct the address of the Land Reclamation Division. The Illinois Department of Natural Resources, Office of Mines and Minerals (Department), was notified by the federal Office of Surface Mining (OSM) that existing regulation Section 1816.116(a)(2)(F) was less effective than its federal counterpart as required by the federal Surface Mining Control and Reclamation Act. In accordance with CFR 732.17(f)(1), the Department was instructed to provide

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

program amendments to correct its defective regulations. In addition, provisions were added to incorporate the updated federal performance standards for previously mined areas and to correct outdated agency addresses.

Section 1816.117(a)(1) provides that the sampling techniques for measuring tree and shrub stocking success shall use a 90 percent statistical confidence interval (i.e., one-sided t test with a 0.10 alpha error). There is a direct relationship between the t value and the confidence interval. When the number of sample plots (degrees of freedom) increases, the value of t decreases. The one-tailed t value at 0.10 alpha error with 120 degrees of freedom equals 1.289. However, with an infinite number of degrees of freedom the t value equals 1.282. Therefore, statistically, we tend to not gain much survey accuracy beyond 120 samples (plots). Based on this, using 200 samples as the highest number of samples used on areas of 50 acres or larger is justifiable. The Department uses a 1/160 acre plot size for tree and shrub sampling. Sampling 2.5 percent of a 50 acre area would result in 200 plots being used. In accordance with the current formula, the number of plots needed to sample areas of 50 acres or less would not change. Using fewer plots on tracts of land larger than 50 acres would result in considerable personnel time savings and still provide statistically accurate results.

16) Information and questions regarding this adopted amendment shall be directed to:

Karen Jacobs, Legal Counsel
Department of Natural Resources
524 South Second Street
Springfield, IL 62701
(217)782-1809

The full text of the Adopted Amendments begins on the next page:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1816
PERMANENT PROGRAM PERFORMANCE STANDARDS - SURFACE MINING ACTIVITIES

Section
1816.11 Signs and Markers
1816.13 Casing and Sealing of Drilled Holes: General Requirements
1816.14 Casing and Sealing of Drilled Holes: Temporary
1816.15 Casing and Sealing of Drilled Holes: Permanent
1816.21 Topsoil: General Requirements (Repealed)
1816.22 Topsoil and Subsoil
1816.23 Topsoil: Storage (Repealed)
1816.24 Topsoil: Redistribution (Repealed)
1816.25 Topsoil: Nutrients and Soil Amendments (Repealed)
1816.41 Hydrologic Balance Protection
1816.42 Hydrologic Balance: Water Quality Standards and Effluent Limitations
1816.43 Diversions
1816.44 Hydrologic Balance: Stream Channel Diversions (Repealed)
1816.45 Hydrologic Balance: Sediment Control Measures
1816.46 Hydrologic Balance: Siltation Structures
1816.47 Hydrologic Balance: Discharge of Structures
1816.48 Hydrologic Balance: Acid-Forming and Toxic-Forming Spoil (Repealed)
1816.49 Impoundments
1816.50 Hydrologic Balance: Ground Water Protection (Repealed)
1816.51 Hydrologic Balance: Protection of Ground Water Recharge Capacity (Repealed)
1816.52 Hydrologic Balance: Surface and Ground Water Monitoring (Repealed)
1816.53 Hydrologic Balance: Transfer of Wells (Repealed)
1816.54 Hydrologic Balance: Water Rights and Replacement (Repealed)
1816.55 Hydrologic Balance: Discharge of Water Into an Underground Mine (Repealed)
1816.56 Post-Mining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities
1816.57 Hydrologic Balance: Stream Buffer Zones
1816.59 Coal Recovery
1816.61 Use of Explosives: General Requirements
1816.62 Use of Explosives: Pre-Blasting Survey
1816.64 Use of Explosives: Public Notice of Blasting Schedule
1816.65 Use of Explosives: Surface Blasting Requirements (Repealed)
1816.66 Use of Explosives: Blasting Signs, Warnings, and Access Control
1816.67 Use of Explosives: Control of Adverse Effects
1816.68 Use of Explosives: Records of Blasting Operations
1816.71 Disposal of Excess Spoil: General Requirements
1816.72 Disposal of Excess Spoil: Valley Fills/Head-of-Hollow Fills

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1816.73 Disposal of Excess Spoil: Head-Of-Hollow Fills (Repealed)
1816.74 Disposal of Excess Spoil: Durable Rock Fills
1816.75 Disposal of Excess Spoil: Preexisting Benches
1816.79 Protection of Underground Mining
1816.81 Coal Mine Waste: General Requirements
1816.82 Coal Processing Waste Banks: Site Inspection (Repealed)
1816.83 Coal Mine Waste: Refuse Piles
1816.84 Coal Mine Waste: Impounding Structures
1816.85 Coal Processing Waste Banks: Construction Requirements (Repealed)
1816.86 Coal Processing Waste: Burning (Repealed)
1816.87 Coal Mine Waste: Burned Waste Utilization
1816.88 Coal Processing Waste: Return to Underground Workings (Repealed)
1816.89 Disposal of Noncoal Mine Wastes
1816.91 Coal Processing Waste: Dams and Embankments: General Requirements (Repealed)
1816.92 Coal Processing Waste: Dams and Embankments: Site Preparation (Repealed)
1816.93 Coal Processing Waste: Dams and Embankments: Design and Construction (Repealed)
1816.94 Coal Processing Waste: Time and Requirements for Completion of Covering (Repealed)
1816.95 Stabilization of Surface Areas
1816.97 Protection of Fish, Wildlife, and Related Environmental Values
1816.99 Slides and Other Damage
1816.100 Contemporaneous Reclamation
1816.101 Backfilling and Grading: General Requirements
1816.102 Backfilling and Grading: General Grading Requirements
1816.103 Backfilling and Grading: Covering or Treating Coal and Acid- and Toxic-Forming Materials (Repealed)
1816.104 Backfilling and Grading: Thin Overburden
1816.105 Backfilling and Grading: Thick Overburden
1816.106 Backfilling and Grading: Previously Mined Areas
1816.107 Backfilling and Grading: Steep Slopes
1816.111 Revegetation: General Requirements
1816.112 Revegetation: Use of Introduced Species (Repealed)
1816.113 Revegetation: Timing
1816.114 Revegetation: Mulching and Other Soil Stabilizing Practices
1816.115 Revegetation: Grazing (Repealed)
1816.116 Revegetation: Standards for Success
1816.117 Revegetation: Tree and Shrub Vegetation
1816.131 Cessation of Operations: Temporary
1816.132 Cessation of Operations: Permanent
1816.133 Post-Mining Land Capability
1816.150 Roads: General
1816.151 Primary Roads
1816.180 Utility Installations
1816.181 Support Facilities
1816.190 Affected Acreage Map

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

APPENDIX A Agricultural Lands Productivity Formula
EXHIBIT A County Crop Yields by Soil Mapping Unit
TABLE A Subsoil Adjustments
TABLE B Soil Variance Codes
TABLE C County Numbering System
TABLE D Sample Points Per Crop Acres
TABLE E Soil Master Files (Repealed)
TABLE F County Cropped Acreage File (Repealed)

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; amended at 6 Ill. Reg. 15024, effective December 30, 1982; codified at 8 Ill. Reg. 8224; amended at 9 Ill. Reg. 13310, effective October 10, 1985; amended at 10 Ill. Reg. 8985, effective July 1, 1986; amended at 11 Ill. Reg. 8131, effective July 1, 1987; amended at 14 Ill. Reg. 11830, effective January 1, 1991; amended at 15 Ill. Reg. 17166, effective January 1, 1992; amended at 17 Ill. Reg. 11001, effective July 1, 1993; amended at 20 Ill. Reg. 2027, effective January 19, 1996; amended at 22 Ill. Reg. 20228, effective JAN 2 1998.

Section 1816.46 Hydrologic Balance: Siltation Structures

a) Definitions. For the purpose of this Section only:
  1) Siltation structure means a sedimentation pond, a series of sedimentation ponds, or other treatment facility.
  2) Disturbed area shall not include those areas:
    A) In which the only surface mining activities include diversion ditches, siltation structures, or roads that are designed, constructed, and maintained in accordance with this Part; and
    B) For which the upstream area is not otherwise disturbed by the permittee.
  3) Other treatment facilities means any chemical treatments, such as flocculation, or mechanical structures, such as clarifiers, that have a point-source discharge and that are utilized to prevent additional contributions of suspended solids to stream flow or runoff outside the permit area, or to comply with all applicable State and federal water quality laws and regulations.

b) General Requirements:
  1) Additional contributions of suspended solids sediment to stream flow or runoff outside the permit area shall be prevented to the extent possible using the best technology currently available.
  2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area, except as provided in subsection (b)(5) or (e).
  3) Siltation structures for an area shall be constructed before beginning any surface mining activities in that area and, upon construction, shall be sealed by a qualified registered professional engineer to be constructed as designed and as approved in the reclamation plan.
  4) Any siltation structure which impounds water shall be designed, constructed, and maintained in accordance with Section 1816.49.
  5) Siltation structures shall be maintained until removal is authorized by the Department and the disturbed area has been stabilized and revegetated. In no case shall the structure be removed sooner than two ~~(2)~~ years after the last augmented seeding.
  6) When a siltation structure is removed, the land on which the siltation structure was located shall be regraded and revegetated in accordance with the reclamation plan and Sections 1816.111 through 1816.117. Sedimentation ponds approved by the Department for retention as permanent impoundments shall be exempted from this requirement.
  7) The Department encourages the retention of sedimentation ponds which will receive drainage from agricultural areas in the post-mining land use plan.

c) Sedimentation ponds:
  1) When used, sedimentation ponds shall:
    A) Be used individually or in series;
    B) Be located as near as possible to the disturbed area and out of perennial streams unless approved by the Department in accordance with Section 1816.57; and
    C) Be designed, constructed, and maintained to:
      i) Provide adequate sediment storage volume;
      ii) Provide adequate detention time to allow the effluent from the ponds to meet effluent limitations specified in Section 1816.42;
      iii) Contain or treat the ten ~~(10)~~ year, ~~twenty-four-(~~ 24~~)~~ hour precipitation event ("design event") unless a lesser design event is approved by the Department based on terrain, climate, other site specific conditions, and on a demonstration by the permittee that the effluent limitations of Section 1816.42 will be met;
      iv) Provide a nonclogging dewatering device adequate to maintain the detention time required under subsection (c)(1)(C)(ii);
      v) Minimize, to the extent possible, short circuiting;
      vi) Provide periodic sediment removal sufficient to maintain adequate volume for the design event;
      vii) Ensure against excessive settlement;
      viii) Be free of sod, large roots, frozen soil, and acid- or toxic-forming coal processing waste; and
      ix) Be compacted properly.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

2) Sedimentation pond discharge structures shall be designed according to the following:
   A) Sedimentation ponds meeting the size or other qualifying criteria of 30 CFR 77.216(a) (1994) shall comply with all the requirements of 30 CFR 77.216 (1994) and shall have principal and emergency spillways that in combination will safely pass a ~~one--hundred--(~~ 100~~)~~ year, six ~~(6)~~ hour precipitation event; and
   B) Sedimentation ponds not meeting the size or other qualifying criteria of 30 CFR 77.216(a) (1994) shall provide a combination of principal and emergency spillways that will safely discharge a ~~twenty-five-(~~ 25~~)~~ year, six ~~(6)~~ hour precipitation event. Such ponds may use a single spillway if the spillway:
      i) Is an open channel of nonerodable construction and capable of maintaining sustained flows; and
      ii) Is not earth- or grass-lined.
   C) 30 CFR 77.216 (1994) does not include any later amendments or editions.

d) Other treatment facilities.
   1) Other treatment facilities shall be designed to treat the ten ~~(10)~~ year, ~~twenty-four--(~~ 24~~)~~ hour precipitation event unless a lesser design event is approved by the Department based on terrain, climate, other site specific conditions, and a demonstration by the permittee that the effluent limitations of Section 1816.42 will be met.
   2) Other treatment facilities shall be designed in accordance with the applicable requirements of subsection (c).

e) Exemptions. Exemptions to the requirements to pass all drainage from disturbed areas through a siltation structure may be granted if the disturbed drainage area within the total disturbed area is small; and
   1) Alternate sediment control measures as described in Section 1816.45(b) are used in lieu of a siltation structure, and the permittee demonstrates that siltation structures are not necessary for drainage from the disturbed area to meet the effluent limitations and water quality standards for the receiving waters set forth in Section 1816.42; or
   2) The permittee demonstrates that siltation structures and alternate sediment control measures are not necessary for drainage from the disturbed area to meet the effluent limitations and water quality standards for the receiving waters set forth in Section 1816.42.

(Source: Amended at 22 Ill. Reg. 20228, effective NOV 5 1998)

Section 1816.49 Impoundments

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

a) The requirements of this subsection apply to both temporary and permanent impoundments.
   1) Impoundments meeting the size and other qualifying criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 (1991) and this Section. 30 CFR 77.216 does not include any later editions or amendments. The plan required to be submitted to the District Manager of the Mine Safety and Health Administration (MSHA) under 30 CFR 77.216 shall also be submitted to the Department as part of the permit application insofar as the MSHA informational design standard requirements are duplicative of the requirements of 62 Ill. Adm. Code 1780. In addition, the operator shall submit to the Department any certification issued by MSHA with respect to the design plan.
   2) The design of impoundments shall be sealed in accordance with 62 Ill. Adm. Code 1780.25(a) as designed to meet the requirements of this Part using current, prudent engineering practices. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.
   3) Stability.
      A) An impoundment meeting the size or other criteria of 30 CFR 77.216(a) or located where failure would be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.
      B) Impoundments not meeting the size or other criteria of 30 CFR 77.216(a), except for a coal mine waste impounding structure, and located where failure would not be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions, or meet the design, construction and maintenance requirements of U.S. Natural Resources ~~Soil~~ Conservation Service Practice Standard IL 278 ~~378~~, "Ponds," June 1992 ~~April---1987~~. Practice Standard 378 is hereby incorporated by reference and does not include later editions or amendments.
   4) Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.
   5) Foundations.
      A) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

B) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

6) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

7) Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

8) Impoundments shall include a combination of principal and emergency spillways which shall be designed and constructed to safely pass the design precipitation event specified in subsection (b) or (c).

9) Inspections. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments, as evidenced by the placement of a registered professional engineer's seal on the inspection report.

A) Impoundments meeting the size or other criteria of 30 CFR 77.216(a) shall be inspected, examined and certified in accordance with 30 CFR 77.216. Annual status reports required under 30 CFR 77.216-4 shall be submitted to the Department within 30 days after the reporting period.

B) All other impoundments shall be inspected at least quarterly during construction, provided at least one ~~(1)~~ inspection is conducted for impoundments completed in less than one ~~(1)~~ quarter, and upon completion of construction. The qualified registered professional engineer shall submit to the Department within ~~thirty--(~~ 30~~)~~ days after each inspection, a sealed report that the impoundment has been constructed as designed and in accordance with the approved plan and these regulations.

C) A copy of the reports required in subsections (a)(9)(A) and (B) above, and the examination reports required in subsection (a)(10) below, shall be retained at or near the mine site. The Department may approve reports being retained at a different location if there is no permanent mine office.

10) Impoundments which do not meet the size or other qualifying criteria of 30 CFR 77.216(a) shall be examined at least quarterly by a qualified person designated by the permittee for appearances of instability, structural weakness or other hazardous conditions. At least one of the quarterly examinations conducted during the calendar year shall be sealed by a qualified registered professional engineer and shall include a discussion of any appearances of instability, structural weakness or other hazardous conditions, and any other aspects of the structure affecting stability, and a statement indicating the pond has been maintained in accordance with the approved plan and these regulations. This examination shall be conducted during the period of October 1 through December 31 of each calendar year. The sealed examination report shall be submitted to the Department within 30 days after ~~of~~ the examination. Impoundment examinations shall be conducted until the impoundment has been removed or until final bond release in accordance with 62 Ill. Adm. Code 1800.40. If the operator can demonstrate that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm, the following impoundments shall be exempt from all examination requirements of this subsection, following approval by the Department:

A) Impoundments that are completely incised;

B) Water impounding structures that impound water to a design elevation no more than five ~~(5)~~ feet above the upstream toe of the structure and that can have a storage volume of not more than ~~twenty--(~~ 20~~)~~ acre-feet; provided the exemption request is accompanied by a report sealed by a registered professional engineer licensed in the State of Illinois, accurately describing the hazard potential of the structure. Hazard potential must be such that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm. The report shall be field verified by the Department prior to approval and periodically thereafter. The Department may terminate the exemption if so warranted by changes in the area downstream of the structure or in the structure itself; and

C) Impoundments that do not facilitate mining or reclamation including, but not limited to, sewage lagoons, landscaping ponds, pools or wetlands in replaced stream channels, existing impoundments not yet used to facilitate mining, ephemeral waterbodies, active mining pits and differential settlement pools.

11) If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the Department of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Department shall be notified immediately. The Department shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

b) Permanent impoundments. A permanent impoundment of water may be created, if authorized by the Department in the approved permit, based upon the following demonstration:

1) The size and configuration of the impoundment is adequate for its intended purposes.
2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet water quality standards set forth in Section 1816.42, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below water quality standards set forth in Section 1816.42.
3) The water level will be sufficiently stable and be capable of supporting the intended use.
4) Final grading will provide for adequate safety and access for proposed water users.
5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.
6) The impoundment will be suitable for the approved post-mining land use.
7) The impoundment perimeter slopes shall be consistent with the intended use of the impoundment, not be steeper than the angle of repose and comply with subsection (a)(3). Where surface runoff enters the impoundment area, the side slope shall be protected against erosion.
   A) Runoff from above the slope shall be diverted to erosion free outlets.
   B) Grading of slopes shall be scheduled to be completed at the onset of the most favorable seeding period.
8) Embankment ponds, those having embankment heights of three ~~(3)~~ feet or greater above natural ground elevation, shall have outslopes of 1v:2h or less and interior slopes to the normal pool elevation of 1v:2h or less.
9) Permanent impoundments not meeting the size or other qualifying criteria of 30 CFR 77.216(a) shall be provided with a spillway that will safely discharge a ~~twenty-five-(~~ 25~~)~~ year, six ~~(6)~~ hour precipitation event, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil type. Permanent impoundments meeting the size or other criteria of 30 CFR 77.216(a) shall be provided with a spillway that will safely discharge a ~~one-hundred-(~~ 100~~)~~ year, six ~~(6)~~ hour precipitation event, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil type.
10) In lieu of the combination principal and emergency spillway requirements of Section 1816.49(a)(8), an impoundment may have a single spillway configured as set forth in subsections (b)(10)(A) and (b)(10)(B) that is designed and constructed to safely pass the applicable design precipitation specified in subsection (b)(9). The Department shall approve a single open-channel spillway that is:
    A) Of nonerodible construction and designed to carry sustained flows; or
    B) Earth or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

c) Temporary impoundments~~.~~
   1) Temporary impoundments not meeting the size or other qualifying criteria of 30 CFR 77.216(a) shall be provided with a spillway that will safely discharge a ~~twenty-five-(~~ 25~~)~~ year, six ~~(6)~~ hour precipitation event or such larger event as may be required by the Department based on factors such as terrain, topography and soil type. Temporary impoundments meeting the size or other criteria of 30 CFR 77.216(a) shall be provided with a spillway that will safely discharge a ~~one-hundred-(~~ 100~~)~~ year, six ~~(6)~~ hour precipitation event, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil type.
   2) In lieu of the combination principal and emergency spillway requirements of Section 1816.49(a)(8), an impoundment may have either:
      A) A single spillway configured as set forth in subsection (c)(2)(A)(i) or (c)(2)(A)(ii) that is designed and constructed to safely pass the applicable design precipitation specified in subsection (c)(1). The Department shall approve a single open-channel spillway that is:
         i) Of nonerodible construction and designed to carry sustained flows; or
         ii) Earth or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected; or
      B) Sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer in accordance with 62 Ill. Adm. Code 1780.25(a) that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current prudent engineering practices. Impounding structures relying on this method to control runoff shall be located where failure would not be expected to cause loss of life or serious property damage, except where:
         i) In the case of an impoundment meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of the probable maximum

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

precipitation of a 6-hour event, or greater event as specified by the Department.

ii) In the case of an impoundment not meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of a 100-year 6-hour event, or greater event as specified by the Department.

(Source: Amended at 22 Ill. Reg. 20228, effective NOV 5 1998)

Section 1816.64 Use of Explosives: Public Notice of Blasting Schedule

a) All blasting shall be conducted from sunrise to sunset, and at times announced in the blasting schedule. The Department shall limit the area covered, timing and sequence of blasting, as listed in the schedule, if such limitations are necessary and reasonable in order to protect public health, safety or welfare.

b) Unscheduled blasting may be conducted only where public or operator health and safety so require. When an operator conducts an unscheduled blast, the operator, using audible warning signals, shall notify residents within one-half ~~(1/2)~~ mile of the blasting site and document the reason(s) for the unscheduled blast in accordance Section 1816.68(a)(17). Unscheduled blasting does not include nighttime blasting, which is prohibited at all times.

c) Blasting schedule publication~~.~~

1) Each person who conducts surface mining activities shall publish a blasting schedule at least ten ~~thirty (30)~~ days, but not more than 30 ~~sixty (60)~~ days, before beginning a blasting program in which blasts that use more than five ~~(5)~~ pounds of explosive or blasting agent are detonated. The blasting schedule shall be published in a newspaper of general circulation in the locality of the blasting site.

2) Copies of the schedule shall be distributed by mail to local governments and public utilities and mailed or delivered to each residence within one-half ~~(1/2)~~ mile of the proposed blasting area and to every other person within or outside such area to whom the Department requires to be mailed, and daily notices shall be provided to such persons prior to any blasting.

3) The person who conducts the surface mining activities shall republish and redistribute the schedule by mail at least every ~~twelve (~~ 12~~)~~ months and revise and republish the schedule at least ten ~~thirty (30)~~ days but not more than 30 ~~sixty (60)~~ days before blasting in areas not covered in the current schedule or if the actual blasting times differ from the time periods listed in the current schedule for more than ~~twenty percent (~~ 20%~~)~~ of the blasts fired.

d) The blasting schedule shall contain at a minimum: ~~Blasting schedule contents.~~

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

~~1) A blasting schedule shall not be so general as to cover the entire permit area or all working hours, but shall identify as accurately as possible the location of the blasting sites and the time periods when blasting will occur.~~

~~2) The blasting schedule shall contain at a minimum:~~

1) ~~A)~~ Identification of the specific areas in which blasting will take place;

2) ~~B)~~ Dates and time periods when explosives are to be detonated;

3) ~~C)~~ Methods to be used to control access to the blasting area;

4) ~~D)~~ Types of audible warnings and all-clear signals to be used before and after blasting; and

5) ~~E)~~ Name, address, and telephone number of operator.

e) Public notice of changes in blasting schedules~~.~~
Before blasting in areas or at times not in a previous schedule, the person who conducts the surface mining activities shall prepare a revised schedule according to the procedures in subsections (c) and (d).

(Source: Amended at 22 Ill. Reg. 20228, effective NOV 5 1998)

Section 1816.66 Use of Explosives: Blasting Signs, Warnings, and Access Control

a) Blasting signs shall meet the specifications of Section 1816.11. The operator shall:

1) Conspicuously display signs reading "Blasting Area" along the edge of any blasting area that comes within ~~one-hundred (~~ 100~~)~~ feet of any public road right-of-way, and at the point where any other road provides access to the blasting area; and

2) At all entrances to the permit area from public roads or highways, place conspicuous signs which state "Warning! Explosives in Use" and which clearly list and describe the meaning of the audible blast warning and all-clear signals that are in use, and which explain the marking of blasting areas and charged holes awaiting firing within the permit area.

b) Warning and all-clear signals of different character or pattern that are audible within one-half ~~(1/2)~~ mile of the blast shall be given. Each person within the permit area and each person who resides or regularly works within one-half ~~(1/2)~~ mile of the permit area shall be notified of the meaning of the signals in the blasting schedule. The requirement to supply daily notice may be fulfilled by the audible warning signals.

c) Access to the blasting area shall be controlled to prevent the presence of livestock or unauthorized personnel during blasting and until an authorized representative of the person who conducts the surface mining activities has reasonably determined:

1) That no unusual circumstances, such as imminent slides or

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

undetonated charges, exist; and

2) That access to and travel in or through the area can be safely resumed.

d) Proximity to buildings and other facilities

1) Blasting shall not be conducted within ~~three-hundred-(~~ 300~~)~~ feet of any building used as a dwelling unless waived by the owner or within ~~three--hundred-(~~ 300~~)~~ feet of a school, church, hospital, or nursing facility.

2) Blasting shall not be conducted within ~~one-hundred-(~~ 100~~)~~ feet of facilities including, but not limited to, disposal wells, petroleum or gas storage facilities, municipal water storage facilities, fluid-transmission pipelines, or water and sewage lines unless a waiver is obtained from the owner of the facility and submitted to the Department prior to blasting within 100 feet.

(Source: Amended at 22 Ill. Reg. 20228, effective NOV 5 1998)

Section 1816.67 Use of Explosives: Control of Adverse Effects

a) Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel or availability of ground or surface water outside the permit area.

b) Air blast limits

1) Air blast shall be controlled so that it does not exceed the values specified below at any dwelling, public building, school, church, or commercial or institutional structure, unless such structure is owned by the person who conducts the surface mining activities and is not leased to any other person. If a building owned by the person conducting surface mining activities is leased to another person, the lessee may sign a waiver relieving the operator from meeting the air blast limitations of this subsection. The waiver shall be submitted to the Department before beginning blasting.

Lower frequency limit of measuring system, Hz +3dB	Maximum level in dB
0.1 Hz or lower--flat response*	134 peak
2.0 Hz or lower--flat response	133 peak
6.0 Hz or lower--flat response	129 peak

* Only when approved by the Department

2) The measuring systems used shall have a flat frequency response of at least ~~two-hundred-(~~ 200~~)~~ Hz at the upper end.

3) The person who conducts blasting may satisfy the provisions of

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

subsection (b) by meeting any of the three ~~(3)~~ specifications in the chart in subsection (b)(1).

4) If necessary to prevent damages specified in subsection (a), the Department shall specify lower maximum allowable airblast levels than those in subsection (b)(1) for use in the vicinity of a specific blasting operation.

c) Air blast monitoring

1) When the cube root scaled distance, as defined in subsection (c)(2), to the nearest dwelling, public building, school, church, or commercial or institutional structure has a value less than 350 and when the burden to hole depth ratio is greater than 1.0, or the top stemming height is less than 70% of the burden dimension, the air blast produced by that blast shall be measured, recorded, analyzed, and reported pursuant to subsection (g) of this Section and Section 1816.68(b). This subsection shall not apply to horizontal blast holes drilled from the floor of the pit.~~:~~

~~A) The burden-to-hole-depth-ratio-is-greater-than-1.0,-or~~

~~B) The--top--stemming-height-is-less-than-seventy-percent-(70%)-of-the-burden-dimension,-the--air--blast--produced--by--that-blast--shall--be--measured,-recorded,-analyzed,-and-reported-pursuant-to-subsection-(h)--and--Section--1816.68(b).---This-subsection-shall-not-apply-to-horizontal-blast-holes-drilled-from-the-floor-of-the-pit.~~

2) Cube root scaled distance equals the distance, in feet, from the blast to a specified location divided by the cube root of the maximum weight of explosives, in pounds, to be detonated in any eight ~~(8)~~ millisecond period.

3) To ensure compliance with the limits contained in this Section, the Department may require an air blast measurement of any or all blasts, and may specify the location of such measurements.

d) Flyrock, including blasted material traveling in the air, or along the ground, shall not be cast beyond the permit boundaries or beyond the area of regulated access required under Section 1816.66(c), or more than one-half the distance to the nearest dwelling or other occupied structure.

e) Ground vibration limits

1) In all blasting operations, except as otherwise authorized in this Section, the maximum peak particle velocity shall not exceed one ~~(1)~~ inch per second at the location of any dwelling, public building, school, church, or commercial or institutional building. At distances greater than ~~five-thousand-(~~ 5,000~~)~~ feet from the blast to any structures described in this subsection, the maximum allowable peak particle velocity shall not exceed 0.75 inch per second at the locations of the structures described in this subsection. At distances less than ~~three-hundred-(~~ 300~~)~~ feet from the blast to any structures described in this subsection, the maximum allowable peak particle velocity shall

not exceed 1.25 inch per second at the locations of the structures described in this subsection. These limits shall apply separately to each component of motion as defined in subsection (g) ~~(h)~~. The Department shall reduce peak particle velocity limits if determined necessary to provide damage protection, if so recommended in any pre-blast survey or condition survey report provided pursuant to Section 1816.62.

2)~~f)~~ Blasting shall be ~~If blasting is~~ conducted to prevent adverse impacts on any underground mine and changes in the course, channel, or availability of ground~~,~~ or surface water outside the permit area.~~,~~ Ground vibration limits, including the ~~then the~~ maximum peak particle velocity limitation of subsection (e)(1), ~~(d)~~ shall not apply at the following locations ~~location~~:

A)~~1)~~ At structures owned by the person conducting the mining activity, and not leased to another party; and

B)~~2)~~ At structures owned by the person conducting the mining activity, and leased to another party, if a written waiver by the lessee is submitted to the Department prior to blasting.

f)~~g)~~ Ground vibration monitoring

1) When the scaled distance, as defined below, has a value less than ~~sixty-five--(~~ 65~~)~~ at the nearest dwelling, public building, school, church, or commercial or institutional structure, a seismograph recording shall be made at or near the closest structure requiring protection.

2~~1~~) Scaled Distance = The distance, in feet, from the blast to a specified location divided by the square root of the maximum weight of explosives, in pounds, to be detonated in any eight ~~(8)~~ millisecond period.

3~~2~~) To ensure compliance with the limits contained in this Section, the Department may require a seismograph recording of any or all blasts and may specify the location at which such recordings are made.

g~~h~~) As used herein, seismograph recording or record or air blast recording or record shall mean:

A visually inspectable cartesian representation of the time history of the particle velocity levels or air blast levels versus time. Time is represented on the "X" axis. The particle velocity is shown by three traces representing mutually perpendicular components of motion. The components are oriented vertically, transversely, and longitudinally to the horizontal direction from the recording location to the location of the blast. The air blast time history is represented by a single trace. The record or recording includes either an analog representation of, or a written description of the vertical scale for the particle velocity traces and the air blast trace. The units for the particle velocity traces and scale are in inches per second. The units for the air blast trace and scale are millibars, pounds per square inch, or decibels. The recording also includes an analog or

descriptive time scale. The time units are in seconds.

(Source: Amended at 22 Ill. Reg. 20228, effective NOV 5 1998)

Section 1816.83 Coal Mine Waste: Refuse Piles

Refuse piles shall meet the requirements of Section 1816.81, the additional requirements of this Section, and the requirements of 30 CFR 77.214 and 77.215 (1989). 30 CFR 77.214 and 77.215 (1989) do not include any subsequent amendments or editions.

a) Drainage control~~:~~

1) If the disposal area contains springs, natural or man-made water courses, or wet weather seeps, the design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the disposal facility and ensure stability.

2) Uncontrolled surface drainage may not be diverted over the outslope of the refuse piles. Runoff from the areas above the refuse pile and runoff from the surface of the refuse pile shall be diverted into stabilized diversion channels designed to meet the requirements of Section 1816.43 to safely pass the runoff from a ~~one-hundred-(~~ 100~~)~~ year, six ~~(6)~~ hour precipitation event. Runoff diverted from undisturbed areas need not be commingled with runoff from the surface of the refuse pile.

3) Underdrains shall comply with the requirements of Section 1816.71(1)(2).

b) Surface area stabilization. Slope protection shall be provided to minimize erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected from erosion, shall be revegetated upon completion of construction.

c) Placement~~:~~

1) All vegetative and organic materials shall be removed from the disposal area prior to placement of coal mine waste. Topsoil shall be removed, segregated and stored or redistributed in accordance with Section 1816.22. If approved by the Department, organic material may be used as mulch, or may be included in the topsoil to control erosion, promote growth of vegetation or increase the moisture retention of the soil.

2) The final configuration of the refuse pile shall be suitable for the approved post-mining land use. Terraces may be constructed on the outslope of the refuse pile if required for stability, erosion control, conservation of soil moisture, or facilitation of the approved post-mining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:1v (50~~% fifty-(50)-percent~~).

3) No permanent impoundments shall be allowed on the completed refuse pile. Small depressions may be allowed by the Department

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation, and if they are not incompatible with stability of the refuse pile.

4) Following final grading of the refuse pile, the coal mine waste shall be covered with a minimum of four ~~(4)~~ feet of the best available, nontoxic and noncombustible material, in a manner that does not impede drainage from the underdrains. The Department may allow less than four ~~(4)~~ feet of cover material based on physical and chemical analyses which show that the requirements of Section 1816.111 through 1816.117 will be met. The Department shall require the addition of neutralization material to be added to the coal mine waste if, based on physical and chemical analyses, this material is needed to prevent acid mine drainage. This subsection (c)(4) is also applicable to the reclamation of fine coal waste (slurry) not meeting the definition of refuse piles.

d) Inspections. A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall inspect the refuse pile during construction. The professional engineer or specialist shall be experienced in the construction of similar earth and waste structures.

1) Such inspections shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include foundation preparation including the removal of all organic material and topsoil; placement of underdrains and protective filter systems; installation of final surface drainage systems; and the final graded and revegetated facility. Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of coal mine waste materials. More frequent inspections shall be conducted if a danger of harm exists to the public health and safety or the environment. Inspections shall continue until the refuse pile has been finally graded and revegetated.

2) The qualified registered professional engineer shall provide a sealed report to the Department promptly after each inspection that the refuse pile has been constructed and maintained as designed and in accordance with the approved plan and 62 Ill. Adm. Code 1700 through 1850. The report shall include appearances of instability, structural weakness, and other hazardous conditions.

3) The sealed report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with coal mine waste. If the underdrain system is constructed in phases, each phase shall be sealed separately. The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

specifically and clearly identify the site.

4) A copy of each inspection report shall be retained at or near the minesite.

20228

(Source: Amended at 22 Ill. Reg. _____, effective NOV 6 1998 _____)

Section 1816.116 Revegetation: Standards for Success

a) Success of Revegetation

1) Success of revegetation shall be judged in accordance with Sections 1816.116 and 1816.117.

2) Requirements

A) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the Department in accordance with subsection (a)(2)(C) below.

B) The period of extended responsibility shall continue for a period of not less than five ~~(5)~~ full years, except that on lands eligible for remining, the period of responsibility (until September 30, 2004) shall be two ~~(2)~~ full years. Vegetation parameters identified in subsection (a)(1) shall equal or exceed the approved success standard set forth in subsection (a)(3).

C) The Department shall approve selective husbandry practices, excluding irrigation or augmented seeding or augmented fertilization, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the post-mining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal conservation and land use management practices within the region for unmined lands having land uses similar to the approved post-mining land use of the disturbed area, including such practices as disease, pest, and vermin control; any pruning, reseeding and/or transplanting specifically necessitated by such actions; approved agricultural practices described in the Illinois Agronomy Handbook (1993-94); and those practices which are a part of an approved conservation plan subject to the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 1421 et seq.). On all lands with a postmining land use other than cropland, any areas reseeded or replanted as a part or result of a normal husbandry practice must be sufficiently small in size and limited in extent of occurrence, or part of a hay management plan which is an

agricultural practice described by the Illinois Agronomy Handbook or as part of an approved conservation plan subject to the Food, Agriculture, Conservation and Trade Act of 1990, and the reestablished vegetation must be in place for a sufficient length of time so as not to adversely affect the Department's ability to make a valid determination at the time of bond release as to whether the site has been properly reclaimed to a condition in which it will support a diverse, effective, permanent vegetative cover of the required nature and productivity. The Illinois Agronomy Handbook is published by the University of Illinois Cooperative Extension Service, Office of Agricultural Communications and Education, 69E Mumford Hall, 1301 West Gregory Drive, Urbana, Illinois 61801. Copies of the Illinois Agronomy Handbook and the Food, Agriculture, Conservation, and Trade Act of 1990 are available at the Department's Springfield office located at 524 S. Second Street, Springfield, Illinois 62701-1787 ~~300---West Jefferson,--Suite-300,-P.O.-Box-19197,-Springfield,-Illinois 62791-0197~~.

D) Rill and gully repair on cropland-capable reclaimed land will not be considered augmentation if an operator has an approved erosion control plan in place in the field pursuant to 62 Ill. Adm. Code 1823.14(g) or 1825.14(f), and shortly after the first rainfall event after the repair, the Department makes the following determinations:

i) the area is a minor erosional feature;

ii) the area is small;

iii) the erosion is not expected to recur; and

iv) the area is stable.

The Department shall notify the permittee in writing whether or not a repair is augmentative. Such written notice shall be in the form of an inspection report or other document issued by the Department.

E) Rill and gully repair on noncropland-capable land will not be considered augmentation if, shortly after the first rainfall event after the repair, the Department makes the following determinations:

i) the area is a minor erosional feature;

ii) the area is small;

iii) the erosion is not expected to recur; and

iv) the area is stable.

The Department shall notify the permittee in writing whether or not a repair is augmentative. Such written notice shall be in the form of an inspection report or other document issued by the Department.

F) Augmentation

~~i)The--five--(5)--year--period--of--responsibility---shall---not recommence--after--deep--tillage-on-areas-where-the-operator has-met-the-revegetation--success--standards--of--subsection (a)(3)(E)-below.~~

~~ii) If--high--capability--cropland--is--augmented-the-Department shall-retain-sufficient-performance--bond--at--the--time--of phase--II--performance--bond--release--to-ensure-the-cost-of similarly-augmenting-all-other--high--capability--lands,--if required,--is-covered-in-the-remaining-bond-amount.~~ Wetlands shall be considered augmented when significant alterations are made to the size or character of the watershed, pumping is used to maintain water levels, or neutralizing agents, chemical treatments or fertilizers are applied to the wetland area, except that wetlands managed as wildlife food plot areas using agricultural techniques shall not be considered augmented when normal agricultural husbandry practices, such as routine liming and fertilization, are used. Water level management using permanent water control structures is considered a normal husbandry practice.

G) Other Management Practices

The Department shall approve the use of deep tillage for prime farmland and high capability land as a beneficial practice that will not restart the 5 year period of responsibility, if the following conditions are met:

i) The permittee has submitted a request to use the practice and has identified the field that will be deep tilled;

ii) One or more hay crops, or other acceptable row crops, have been grown or will be grown to dry out the subsoil prior to deep tilling the field; and

iii) The Department has determined that the use of deep tillage will be beneficial to the soil structure and long term crop production of the field and the benefits will continue well beyond the responsibility period.

The Department shall notify the permittee in writing of its decision. Such written notice shall be in the form of an inspection report or other document issued by the Department.

3) Ground cover and production shall be considered equal to the approved success standard when they are not less than ~~ninety-(~~ 90%~~)-percent~~ of the success standard. The sampling techniques for measuring success shall use a ~~ninety--(~~ 90%~~)--percent~~ statistical confidence interval (i.e., one-sided t test with a 0.10 alpha error). Vegetative ground cover shall be measured using the technique set forth in 62 Ill. Adm. Code 1816.117(d). Standards for success shall be applied in accordance with the approved post-mining land use and, at a minimum, the following conditions:

A) The vegetative ground cover for areas previously disturbed by mining operations that were not reclaimed to the requirements 62 Ill. Adm. Code 1810 through 1828 and that are remined or otherwise redisturbed by surface coal mining operations, shall not be less than the greater of 70% or the percentage of ground cover existing before redisturbance, and shall be adequate to control erosion during the last year of the responsibility period;

B) For areas to be developed for industrial, commercial or residential use less than two ~~(2)~~ years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion and shall not be less than 70%;

C) For areas designated in the approved reclamation plan as cropland, except those cropland areas subject to 62 Ill. Adm. Code 1823.15, success of revegetation of cropland areas shall be determined in accordance with subsection (a)(4) below. Crop production shall be considered successful if it is ~~ninety-(~~ 90%~~)-percent~~ of that crop production required in subsection (a)(4) with ~~ninety--(~~ 90%~~)--percent~~ statistical confidence (i.e., one-sided t test with a 0.10 alpha error) for a minimum of any two ~~(2)~~ crop years of a ten ~~(10)~~ year period prior to release of the performance bond, except the first year of the five ~~(5)~~ year responsibility period. During the extended five ~~(5)~~ year responsibility period, erosion from cropland must be minimized using equivalent or better management practices than surrounding unmined cropland. The five ~~(5)~~ year responsibility period shall begin after the last year of augmented seeding, fertilizing, or soil treatment and at the time of the planting of the crop(s) to be grown for the productivity showing or crops grown in rotation. Crop production for proof of productivity purposes shall be initiated within ten ~~(10)~~ years after completion of backfilling and final grading. All cropland shall be maintained using proper management practices as set forth in subsection (a)(2)(C) above until the end of the responsibility period;

D) For areas to be developed for fish and wildlife habitat (including shelter belts), recreation, or forest products land uses, success of revegetation shall be determined on the basis of tree and shrub populations and ground cover. The tree and shrub population and ground cover shall meet the standards described in Section 1816.117; **and**

E) For areas designated as pasture and/or hayland or grazing land in the approved reclamation plan, except for erosion control devices and other structures (i.e., levees, ditches, waterways, impounding structures, etc.) productivity success (tons of grasses and/or legumes per acre) shall be

determined in accordance with subsection (a)(4). Productivity shall be considered successful if it is ~~ninety-(~~ 90%~~)--percent~~ of the productivity required in subsection (a)(4) with ~~ninety-(~~ 90%~~)--percent~~ statistical confidence (i.e., one-sided t test with a 0.10 alpha error) for a minimum of any two ~~(2)~~ crop years of a ten ~~(10)~~ year period prior to release of the performance bond, except the first year of the five ~~(5)~~ year extended responsibility period. All pasture, hayland and grazing land shall be maintained using proper management practices as set forth in subsection (a)(2)(C) above until the end of the responsibility period. Production for proof of productivity purposes shall be initiated within ten ~~(10)~~ years after completion of backfilling and final grading. Ground cover shall be considered successful if it is ~~ninety-(~~ 90%~~)-percent~~ with ~~ninety-(~~ 90%~~)--percent~~ statistical confidence (i.e., one sided t test with a 0.10 alpha error) for a minimum of any two ~~(2)~~ years of a ten ~~(10)~~ year period prior to the release of the performance bond, except the first year of the five ~~(5)~~ year extended responsibility period. On high capability land, the Department shall allow the permittee to substitute corn production for hay production. If determined to be a proper management practice in accordance with subsection (a)(2)(C) above, the Department shall allow the permittee to substitute one year of crop production of an allowable crop specified in subsection (a)(4)(D) below for one year of hay production on limited capability land;~~.~~

F) Non-contiguous areas less than or equal to four acres which were disturbed from activities such as, but not limited to, signs, boreholes, power poles, stockpiles and substations shall be considered successfully revegetated if the operator can demonstrate that the soil disturbance was minor, i.e., the majority of the subsoil remains in place, the soil has been returned to its original capability and the area is supporting its approved post-mining land use at the end of the responsibility period.

4) In order to use the Agricultural Lands Productivity Formula, Section 1816.Appendix A, to determine success of revegetation, the following shall apply:

A) The permittee shall submit annually, by February 15, a one ~~(1)~~ inch equals ~~five--hundred-(~~ 500~~)~~ feet or larger scale drawing or aerial photograph delineating:

i) Field boundaries, a field numbering scheme and the total acreage for each field which will be cropped to demonstrate proof of productivity for the coming crop year. The Department shall approve such submittal if the information is correct and accurate. Once field boundaries are established in a submittal, the

boundaries shall not be changed without recommencing the responsibility period, unless the submittal is amended in accordance with subsection (a)(4)(A)(ii) below; and

ii) The crop (e.g., hay, wheat, corn, soybeans, sorghum, etc.) which will be grown on each field to demonstrate proof of productivity for the coming crop year. The permittee may amend its scale drawing in accordance with 62 Ill. Adm. Code 1774.13(b)(2) until July 15 of the submittal year. Each such amendment shall contain a written explanation of changes from the original submittal and include a map reflecting the changes. A field is an area of land reclaimed by a single reclamation technique that comprises either high capability land or prime farmland or limited capability pasture land. The size of the field and its boundaries are determined by such factors which include, but are not limited to, contour, non-cropped boundaries and size of farming equipment. ~~The Department may approve a field to represent non-contiguous areas less than or equal to four acres of the same capability if it determines that the field is representative of reclamation of such areas. These areas shall be managed and vegetated in the same manner as the representative field.~~

B) Fields identified in subsection (a)(4)(A) above to be measured for success of revegetation for cropland shall be planted annually to a single approved crop. The sampling method of Section 1816.Appendix A shall apply. Soil and water conservation practices approved in the permit application including but not limited to grass waterways, diversion ditches, contour grass strips, and sedimentation ponds within the boundaries of a field shall be excluded from the sampling requirements of Section 1816.Appendix A and shall remain vegetated with permanent ground cover species, where appropriate, to conserve soil and water resources. Subject to rulemaking, the Department in cooperation with the Illinois Department of Agriculture may determine if a portion of a field is a representative sample of the entire field when technology has developed to make it possible through physical and chemical agronomic testing to demonstrate success of vegetation through soil surveys or when statistically valid sampling procedures are developed for determining success of revegetation based upon cropping and sampling a representative portion of the field.

C) Adjustments for abnormal growing conditions shall be made if such adjustments are certified by a crop adjuster certified to perform adjustments by the Federal Crop Insurance Corporation. At the request of a permittee, the Department of Agriculture shall make arrangements for such an appraisal or adjustment review. Before any such an appraisal or adjustment shall be arranged, the permittee shall file with the Illinois Department of Agriculture an agreement to pay the full cost of any crop adjustment or appraisal so requested.

D) The crops to be grown shall include those commonly grown on surrounding unmined cropland such as corn, soybeans, hay, sorghum, wheat, or oats. The Department may approve a hay crop use where this is a common use of unmined cropland in the surrounding area. Prime farmland and other cropland areas must include a minimum of one ~~(1)~~ successful year of corn and if the Department has approved its use a maximum of one ~~(1)~~ successful year each of hay, wheat and oat crops.

5) Wetland revegetation shall be deemed successful when:

A) The wetland vegetation criteria in the Corps of Engineers Wetlands Delineation Manual (Department of the Army Technical Report Y-87-1, January 1987, published by the Department of the Army, Waterways Experiment Station, Corps of Engineers, P.O. Box 631, Vicksburg, Mississippi 39180-0631) have been achieved following sampling procedures specified in that manual, which does not include any later amendments or editions and is available for inspection and copying at the Department's office located at 524 S. Second Street, Springfield, Illinois 62701-1787 ~~300 West Jefferson, Suite 300, P.O. Box 10137, Springfield, Illinois 62791-0137~~; and

B) Areas designed to support vegetation in the approved plan shall have a minimum areal coverage of 30~~%~~ percent. The testing procedure in Section 1816.117(d)(1) through (3) shall be used to evaluate the extent of cover. Areal cover shall be determined to be present if any approved wetland species is measured at the increment. The percentage of areal cover shall be established for the area tested by taking the total number of measurements where areal cover was determined to be present.

b) The person who conducts surface mining activities shall:

1) Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the Department, to identify if remedial actions are necessary during the applicable period of liability specified in subsection (a); and

2) Permittees shall submit by February 15 of each year a report of reclamation activities conducted during the previous calendar year, which initiate or may alter the responsibility period or are specifically required by the Department to evaluate a normal husbandry practice, using forms provided by the Department. Examples of reclamation activities to be reported and/or

evaluated include but are not limited to crops used in temporary and permanent seedings, grasses and legumes planted, trees and shrubs planted, soil amendments added, and location and type of augmentation activities. The forms shall be submitted with a copy of the approved post-mining land use and capability map depicting the location of such activities. The map shall be planned as a continuous map so the reclamation activities conducted each year may be added and indicated on the map by the dates the activities were conducted.

(Source: Amended at 22 Ill. Reg. 20228, effective May 5, 1998)

Section 1816.117 Revegetation: Tree and Shrub Vegetation

a) For areas to be developed for fish and wildlife habitat (including shelter belts), recreation, or forest products land uses, success of vegetation shall be determined on the basis of tree and shrub population and vegetative ground cover. Such parameters are described as follows:

1) Trees and shrubs that will be used in determining the success of vegetation and the adequacy of plant arrangement shall have utility for the approved post-mining land use. Tree and/or shrub population shall be considered successful if it meets the population required in subsection (b) below with ~~ninety--(~~ 90%~~)~~ ~~percent~~ statistical confidence (i.e., one-sided t test with a 0.10 alpha error) during the fifth year of the responsibility period or later in the responsibility period. On lands eligible for remining, the period of responsibility (until September 30, 2004) shall be two ~~(2)~~ full years. Trees and shrubs counted in determining such success shall be healthy, e.g., not demonstrating abnormal growth, coloring, leaf drop or disease. At the time of bond release such trees and shrubs shall be alive, and shall have been in place for at least three ~~(3)~~ growing seasons, i.e., three ~~(3)~~ years. Until September 30, 2004, on lands eligible for remining, trees and shrubs need not have been in place for three ~~(3)~~ years; however, such trees and shrubs shall not be counted in determining success during the same calendar year in which they were planted.

2) Vegetative ground cover shall not be less than required to achieve the approved post-mining land use and shall be adequate to control erosion and shall not be less than 70% during the last year of the responsibility period.

3) Permanent roads, parking lots and similar impervious structures on the revegetated area shall not require the planting of trees and shrubs or herbaceous ground cover. Erosion control structures, including pond embankments, shall not require the planting of trees and shrubs.

4) For purposes of this Section, herbaceous species means grasses, legumes and nonleguminous forbs; woody plants means woody shrubs, trees and vines; and ground cover means the area of ground covered by the combined aboveground parts of vegetation and the litter that is produced naturally on site.

5) For purposes of this Section, normal husbandry and conservation practices shall include pruning, disease, pest, vermin and herbaceous vegetation control including mowing, replanting, and rill and gully repairs. The replanting of trees and shrubs in areas described in 62 Ill. Adm. Code 1816.116(a)(2)(C) shall be limited to 20% of the original approved planting rate during the first year of the responsibility period and 10% of the original approved planting rate during the second year of the responsibility period. The repair of rills and gullies shall be limited to those approved as a normal conservation practice under 62 Ill. Adm. Code 1816.116(a)(2)(C), (D) and (E).

b) For areas where woody plants are used for fish and wildlife habitat (including shelter belts), or recreation land uses, the area shall have a minimum population of ~~two-hundred-and-fifty--(~~ 250~~)~~ trees or shrubs per acre. Planting arrangements such as hedgerows, border plantings, clump plantings, shelterbelts, and open herbaceous areas which increase diversity within wildlife areas may be approved by the Department on a case-by-case basis prior to planting such areas. Where woody plants are used for forest products land uses, the area shall have a minimum population of ~~four-hundred-and-fifty-(~~ 450~~)~~ trees or shrubs per acre.

c) For areas planted to trees or shrubs including wildlife habitat (including shelter belts), recreation, and forest products land uses, the sampling procedure for measuring populations is described as follows:

1) The permittee shall submit a scale drawing or aerial photograph delineating the field(s) to be sampled and the total number of acres in each field. A one ~~(1)~~ inch equals ~~five-hundred-(~~ 500~~)~~ feet or larger scale shall be used. Once field boundaries are established in a submittal, the boundaries shall not be changed unless the Department approves a request in accordance with 62 Ill. Adm. Code 1774.13.

2) One of the following circular plot sizes shall be selected by the sample enumerator:

Plot Size/Acres	Radius/Feet
1/160	9.31
1/120	10.75
1/100	11.78
1/90	12.41
1/80	13.17
1/70	14.07
1/60	15.20

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1/50	16.65
1/40	18.61
1/30	21.50
1/20	26.33
1/10	37.24
1/5	52.66
1/4	58.88

3) The number of plots needed to sample 2.5% ~~percent~~ of the area will be calculated employing the following formula:

Number of Plots equals 2.5% ~~percent~~ multiplied by Sample Area in acres divided by plot size.

4) Based on the number of plots needed to be sampled and plot size, locate transect lines an equal distance apart throughout the area to be sampled. Position individual plots an equal distance apart along transect lines. Determine the total length of all transect lines combined and then divide by the total number of plots needed to be sampled. When an individual plot is positioned within ~~sixty (~~ 60~~)~~ feet of the boundary of the area to be sampled, the location of the plot shall be moved perpendicular to the transect line until the plot is ~~sixty (~~ 60~~)~~ feet from the boundary of the area to be sampled or the greatest distance possible where ~~sixty (~~ 60~~)~~ feet cannot be achieved.

5) Sample each plot for compliance with subsections (a)(1) and (b) and record live trees and/or shrubs and species.

6) Calculate population levels as follows:

A) Average number of live trees and/or shrubs per plot equals total number of live trees and/or shrubs divided by number of plots; and

B) Number of live trees and/or shrubs per acre equals average number of live trees and/or shrubs per plot multiplied by plot size denominator.

7) Representatives of the Department shall administer all sampling.

d) Vegetative ground cover shall be measured by the following technique:

1) Twenty ~~(20)~~ random points shall be identified in the area to be tested.

2) A ~~twenty--(~~ 20 feet~~)--foot~~ engineer's tape shall be extended directly south of each point. If the tape extends beyond the boundary of the area to be tested or extends into an area where herbaceous ground cover has been controlled with herbicides to minimize competition with woody plants, the tape shall be rotated in ~~ninety--(~~ 90~~)~~ degree increments until the entire ~~twenty (~~ 20 feet~~) foot~~ length is within the boundary of the area to be tested or area not treated with the herbicide.

3) A measurement shall be taken at each ~~two--tenths--(~~ .2~~)~~ foot increment directly above or below the tape.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

4) Ground cover shall be determined to be present if any vegetation identified in Section 1816.117(a)(4) is measured at the increment.

5) A percentage of ground cover shall be established for the area tested by taking the total number of measurements where ground cover was determined to be present.

(Source: Amended at 22 Ill. Reg. 20228, effective NOV 3 1998)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Permit Applications--Minimum Requirements For Legal, Financial, Compliance, and Related Information

2) Code Citation: 62 Ill. Adm. Code 1778

3) Section Number: 1778.14 — Adopted Action: Amend

4) Statutory Authority: Implemented and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720]

5) Effective Date of Amendments: November 5, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this amendment contain incorporations by reference? No

8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal published in Illinois Register: 22 Ill. Reg. 5294 (March 20, 1998)

10) Has JCAR issued a Statement of Objection to these rules? No

11) Difference(s) between proposal and final version:

a) In Section 1778.14(c), "or any person who is deemed or presumed to own or control the applicant" has been deleted; in subsection (c), "62 Ill. Adm. Code 1843.12" has been changed to read "62 Ill. Adm. Code 1773.5. For each notice of violation issued pursuant to 62 Ill. Adm. Code".

b) All numbering has been simplified.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this amendment replace an emergency rule currently in effect? No

14) Are there any amendments pending of this Part? No

15) Summary and Purpose of Amendment: The Illinois Department of Natural Resources, Office of Mines and Minerals (Department) was notified by the federal Office of Surface Mining (OSM) that the existing regulation was less effective than its federal counterpart as required by the federal Surface Mining Control and Reclamation Act. In accordance with 30 CFR

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

732.17(f)(1), the Department was instructed to provide program amendments to correct its defective regulations.

16) Information and questions regarding this adopted amendment shall be directed to:

Karen Jacobs, Legal Counsel
Department of Natural Resources
524 South Second Street
Springfield, IL 62701
(217)782-1809

The full text of the Adopted Amendments begins on the next page:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1778
PERMIT APPLICATIONS--MINIMUM REQUIREMENTS
FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION

Section
1778.4 Responsibility (Repealed)
1778.11 Applicability (Repealed)
1778.13 Identification of Interests
1778.14 Violation Information
1778.15 Right of Entry Information
1778.16 Relationship to Areas Designated Unsuitable for Mining
1778.17 Permit Term
1778.18 Insurance
1778.20 Identification of Location of Public Office for Filing of Application (Repealed)
1778.21 Proof of Publication
1778.22 Facilities or Structures Used in Common

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 9348; amended at 11 Ill. Reg. 8368, effective July 1, 1987; amended at 14 Ill. Reg. 11873, effective January 1, 1991; amended at 15 Ill. Reg. 17265, effective January 1, 1992; amended at 17 Ill. Reg. 11027, effective July 1, 1993; amended at 20 Ill. Reg. 2080, effective January 19, 1996; amended at 22 Ill. Reg. 20260, effective NOV 5 1998.

Section 1778.14 Violation Information

An application shall contain the following:

a) A statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:
   1) Had a Federal or State coal mining permit suspended or revoked in the last five ~~(5)~~ years preceding the date of submission of the application; or
   2) Forfeited a performance bond or similar security deposited in lieu of bond.

b) If any such suspension, revocation, or forfeiture has occurred, a statement of the facts involved, including:
   1) Identification number and date of issuance of the permit and the date and amount of bond or similar security;
   2) Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;
   3) The current status of the permit, bond, or similar security involved;
   4) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and
   5) The current status of these proceedings.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

c) A list of all violation notices received by the applicant during the three-year period preceding the application date, and a list of all outstanding violation notices received prior to the date of the application by any surface coal mining operation that is deemed or presumed to be owned or controlled by the applicant under the definition of "owned or controlled" and "owns or controls" in 62 Ill. Adm. Code 1773.5. For each notice of violation issued pursuant to 62 Ill. Adm. Code 1843.12 or under a Federal or State program for which the abatement period has not expired, the applicant shall certify that such notice of violation is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation. For each violation notice reported, the list shall include the following information as applicable: ~~For any violation of a provision of the Federal Act (Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq.), a provision of a state regulatory program approved pursuant to the Federal Act or of any law, rule or regulation of the United States or of any state pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:~~
   1) Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;
   2) A brief description of the violation alleged in the notice;
   3) The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in subsection (c) to obtain administrative or judicial review of the violations;
   4) The current status of the proceedings and of the violation notice; and
   5) The actions, if any, taken by any person identified in subsection

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

(c) to abate the violation.

d) Information about the applicant's present financial condition which would provide assurance to the Department that no further forfeiture would be expected.

e) After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under this Section. Information submitted as a change shall be evaluated in the same manner as the original application.

(Source: Amended at 22 Ill. Reg. 20260, effective NOV 5 1998)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Requirements For Permits and Permit Processing

2) Code Citation: 62 Ill. Adm. Code 1773

3)

Section Number:	Adopted Action:
1773.11	Amend
1773.15	Amend

4) Statutory Authority: Implemented and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720]

5) Effective Date of Amendments: November 5, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this amendment contain incorporation by reference? No

8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal published in Illinois Register: 22 Ill. Reg. 5299 (March 20, 1998)

10) Has JCAR issued a Statement of Objection to these rules? No

11) Difference(s) between proposal and final version:

a) In Section 1773.11(b)(1)(C), the "Ill. Rev. Stat." cite has been changed to "[225 ILCS 720]".

b) In Section 1773.15(a)(1), " within 60 days of" has been changed to "within 60 days after"; in subsection (c)(11), "1817.106, 1816.116(a)(2)(B) or 1816.117(a)(2)(B)" has been changed to read "1817.106".

c) In Section 1773.15, a new subsection (c)(13) has been added to read as follows:

"For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 62 Ill. Adm. Code 1816.116(a)(2)(B) or 1817.116(a)(2)(B), the site of the operation is land eligible for remining as defined in 62 Ill. Adm. Code 1701.Appendix A."

d) All numbering has been simplified.

12) Have all the changes agreed upon by the agency and JCAR been made as

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

indicated in the agreement letter issued by JCAR? Yes

13) Will this amendment replace an emergency rule currently in effect? No

14) Are there any amendments pending of this Part? No

15) Summary and Purpose of Amendment:

Section 1764.13(a) has been corrected to reflect the merging of the Department of Mines and Minerals into the Department of Natural Resources.

Sections 1764.15(c)(1), (2) and (3) have been amended to reflect changes that were made to the Surface Coal Mining Land Conservation and Reclamation Act to implement the merging of the Department of Energy and Natural Resources and the Department of Mines and Minerals into the Department of Natural Resources.

16) Information and questions regarding this adopted amendment shall be directed to:

Karen Jacobs, Legal Counsel
Department of Natural Resources
524 South Second Street
Springfield, IL 62701
(217)782-1809

The full text of the Adopted Amendments begins on the next page:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1773
REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

Section
1773.1 Scope and Purpose
1773.5 Definitions
1773.11 Requirements to Obtain Permits
1773.12 Regulatory Coordination with Requirements under Other Laws
1773.13 Public Participation in Permit Processing
1773.14 Opportunity for Public Hearing
1773.15 Review of Permit Applications
1773.17 Permit Conditions
1773.19 Permit Issuance and Right of Renewal
1773.20 Improvidently Issued Permits: General Procedures
1773.21 Improvidently Issued Permits: Rescission Procedures
1773.22 Verification of Ownership or Control Application Information
1773.23 Review of Ownership or Control and Violation Information
1773.24 Procedures for Challenging Ownership or Control Links Shown in the Applicant Violator System
1773.25 Standards for Challenging Ownership or Control Links and the Status of Violations

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 11 Ill. Reg. 8395, effective July 1, 1987; amended at 14 Ill. Reg. 11886, effective January 1, 1991; amended at 15 Ill. Reg. 17274, effective January 1, 1992; amended at 15 Ill. Reg. 17998, effective January 1, 1992; amended at 17 Ill. Reg. 11063, effective July 1, 1993; amended at 20 Ill. Reg. 2090, effective January 19, 1996; amended at 22 Ill. Reg. 20265, effective NOV 5 1998.

Section 1773.11 Requirements to Obtain Permits

a) All operations.
On and after February 1, 1983, no person shall engage in or carry out any surface coal mining operations on non-Federal or non-Indian Lands within the State, unless such person has first been issued a permanent regulatory program permit by the Illinois Department of Natural Resources ~~Mines and Minerals~~ (Department), except as provided for in subsection (b). A permittee need not renew the permit if no surface coal mining operations will be conducted under the permit and solely reclamation activities remain to be done. Obligations established under a permit continue until completion of surface coal mining and reclamation operations, regardless of whether the authorization to

conduct surface coal mining operations has expired or has been terminated, revoked, or suspended.

b) Continuation of interim regulatory program operations.

1) A person authorized to conduct surface coal mining and reclamation operations under a permit issued or amended by the Department in accordance with the requirements of the interim regulatory program may conduct such operations beyond February 1, 1983, if:

A) Not later than August 3, 1982, regardless of litigation contesting that program, an application for a permanent regulatory program permit is filed for any operation to be conducted after February 1, 1983, in accordance with the provisions of the permanent program;

B) The Department has not yet rendered an initial administrative decision approving or disapproving the permit; and

C) The surface coal mining and reclamation operation is conducted in compliance with the requirements of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) (Federal Act), the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720] ~~{Ill.--Rev. Stat.--1989,-ch.-96~1/2,-pars.-7901.01-et-seq.}~~ (State Act), 62 Ill. Adm. Code 1800 through 1850 and all terms and conditions of the interim program permit.

2) No new interim program permits shall be issued.

(Source: Amended at 22 Ill. Reg. 20265, effective MAY 5 1998)

Section 1773.15 Review of Permit Applications

a) General.

1) The Department shall review the application for a permit, revision, or renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, in accordance with Section 1773.19, either granting, requiring modification of, or denying the application. If a public hearing is held under Section 1773.14, the decision shall be made within ~~sixty-(~~ 60~~)~~ days after ~~of~~ the close of the public hearing, unless a later time is necessary to provide an opportunity for a hearing under subsection (b)(3) below.

2) The applicant for a permit or revision of a permit shall have the burden of establishing that his application is in compliance with all the requirements of the regulatory program.

b) Review of violations.

1) Based on a review of all reasonably available information concerning violation notices and ownership or control links

involving the applicant, including information obtained pursuant to Sections 1773.22, 1773.23, 1778.13 and 1778.14, the Department shall not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of the State Act, Federal Act, any State or federal regulation promulgated pursuant thereto, a State program, or any federal or State law or regulation pertaining to air or water environmental protection. In the absence of a failure-to-abate cessation order, the Department may presume that a notice of violation issued pursuant to 62 Ill. Adm. Code 1843.12 or under a Federal or State program is being corrected to the satisfaction of the agency with jurisdiction over the violation where the abatement period for such notice of violation has not yet expired and when, as part of the violation information provided pursuant to 62 Ill. Adm. Code 1778.14, the applicant has provided certification that such violation is in the process of being so corrected. Such presumption shall not apply where evidence to the contrary is set forth in the the permit application, or where the notice of violation is issued for nonpayment of abandoned mine land reclamation fees or civil penalties. If a current violation exists, the Department shall require the applicant or person who owns or controls the applicant, before the issuance of the permit, to either:

A) Submit to the Department proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

B) Establish for the Department that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the circuit or district court reviewing the violation, pursuant to 62 Ill. Adm. Code 1847.4(p), 30 CFR 775.13 or in accordance with the procedures established by other state regulatory authorities, either denies a stay applied for in the appeal or affirms the violation, then the applicant shall submit the proof required under subsection (b)(1)(A) above within ~~thirty--(~~ 30~~)~~ days after ~~of~~ the court's decision.

2) Any permit that is issued on the basis of a presumption supported by certification under 62 Ill. Adm. Code 1778.14 that a violation is in the process of being corrected, on the basis of proof submitted under subsection (b)(1)(A) of this Section that a violation is in the process of being corrected, or pending the outcome of an appeal described in subsection (b)(1)(B) of this Section, shall be conditionally issued.

3) If the Department makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Federal or State Acts of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Federal or State Acts, the application shall be denied. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 62 Ill. Adm. Code 1847.3.

c) Written findings for permit application approval.
No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates and the Department finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

1) The application is complete and accurate and the applicant has complied with all requirements of the Federal Act, State Act and the regulatory program.
2) The applicant has demonstrated that reclamation as required by the Federal Act, State Act and the regulatory program can be accomplished under the reclamation plan contained in the permit application.
3) The proposed permit area or the proposed shadow area for a planned subsidence operation is:
   A) Not within an area under study or administrative proceedings under a petition, filed pursuant to 62 Ill. Adm. Code 1764, to have an area designated as unsuitable for surface coal mining operations, unless the applicant demonstrates that before January 4, 1977, he has made substantial legal and financial commitments in relation to the operation covered by the permit application; or
   B) Not within an area designated as unsuitable for mining pursuant to 62 Ill. Adm. Code 1762 and 1764 or subject to the prohibitions or limitations of 62 Ill. Adm. Code 1761.11 and 1761.12.
4) For mining operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the Department the documentation required under 62 Ill. Adm. Code 1778.15(b).
5) The Department has made an assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area, in accordance with 62 Ill. Adm. Code 1780 and 1784 and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.
6) The applicant has demonstrated that any existing structure will comply with 62 Ill. Adm. Code 1700.11(d).
7) The applicant has paid all reclamation fees from previous and existing operations as required by 30 CFR 870.
8) The applicant has satisfied the applicable requirements of 62 Ill. Adm. Code 1785.
9) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural post-mining land use, in accordance with the requirements of 62 Ill. Adm. Code 1816.111(d) and 1817.111(d).
10) The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).
11) For a proposed remaining operation where the applicant intends to reclaim in accordance with the requirements of 62 Ill. Adm. Code 1816.106, or 1817.106, ~~or~~ the site of the operation is a previously mined area as defined in 62 Ill. Adm. Code 1701 Appendix A.
12) The Department has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the Department has determined that no additional measures are necessary.
13) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 62 Ill. Adm. Code 1816.116(a)(2)(B) or 1817.116(a)(2)(B), the site of the operation is land eligible for remining as defined in 62 Ill. Adm. Code 1701.Appendix A.

d) Expiration of findings.
Written findings issued by the Department approving a permit application shall expire within one ~~(1)~~ year from the date of issuance if the permit has not been issued based upon the applicant's failure to submit permit fees in accordance with 62 Ill. Adm. Code 1777.17 or a performance bond in accordance with 62 Ill. Adm. Code 1800.11. When written findings expire, the Department will take no further action on the permit application. Should the applicant choose to resume permitting activity for the area in question, a new permit application must be submitted in accordance with the requirements of this Part.

e) Final compliance review.
After an application is approved, but before the permit is issued, the Department shall reconsider its decision to approve the application, based on the compliance review required by subsection (b)(1), in light of any new information submitted under 62 Ill. Adm. Code 1778.13(i) and 1778.14(e).

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

(Source: Amended at 22 Ill. Reg. 20265, effective November 5, 1998)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Requirements for Permits for Special Categories of Mining

2) Code Citation: 62 Ill. Adm. Code 1785

3) Section Number: 1785.17 — Adopted Action: Amend

4) Statutory Authority: Implemented and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720]

5) Effective Date of Amendments: November 5, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this amendment contain incorporations by reference? No

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal published in Illinois Register: 22 Ill. Reg. 5306 (March 20, 1998)

10) Has JCAR issued a Statement of Objection to these rules? No

11) Difference(s) between proposal and final version:

a) In the Source note, "recodified from Department of Mines and Minerals to the Department of Natural Resources at 21 Ill. Reg. 16192" has been added after "January 19, 1996;".

b) In Section 1785.17(d), "within 30 days of" has been changed to "within 30 days after"; in subsection (e)(3), "and" has been stricken; in subsection (e)(4), "; and" has been added at the end of the paragraph.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this amendment replace an emergency rule currently in effect? No

14) Are there any amendments pending of this Part? No

15) Summary and Purpose of Amendment:

The Illinois Department of Natural Resources, Office of Mines and Minerals (Department) was notified by the federal Office of Surface Mining (OSM) on

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

October 30, 1997 that the existing regulation was less effective than its federal counterpart as required by the federal Surface Mining Control and Reclamation Act. In accordance with 30 CFR 732.17(f)(1), the Department was instructed to provide program amendments to correct its defective regulations.

In order to be no less effective than its federal counterpart, Section 1785.17(e)(5) has been added to ensure that all prime farmland affected by surface mining operations is reclaimed to prime farmland and that the consent of the property owners is obtained.

16) Information and questions regarding this adopted amendment shall be directed to:

Karen Jacobs, Legal Counsel
Department of Natural Resources
524 South Second Street
Springfield, IL 62701
(217)782-1809

The full text of the Adopted Amendments begins on the next page:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1785
REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

Section
1785.1 Scope
1785.2 Objective
1785.13 Experimental Practices Mining
1785.14 Mountaintop Removal Mining
1785.15 Steep Slope Mining
1785.16 Permits Incorporating Variances From Approximate Original Contour Restoration Requirements
1785.17 Prime Farmlands
1785.18 Variances for Delay in Contemporaneous Reclamation Requirement in Combined Surface and Underground Mining Activities
1785.20 Augering
1785.21 Coal Preparation Plants Not Located Within the Permit Area of a Mine
1785.22 In Situ Processing Activities
1785.23 Minor Underground Mine Facilities Not at or Adjacent to the Processing or Preparation Facility or Area

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 15930; amended at 9 Ill. Reg. 13324, effective October 10, 1985; amended at 11 Ill. Reg. 8416, effective July 1, 1987; amended at 17 Ill. Reg. 11075, effective July 1, 1993; amended at 20 Ill. Reg. 2107, effective January 19, 1996; recodified from the Department of Mines and Minerals to the Department of Natural Resources at 21 Ill. Reg. 16192; amended at 22 Ill. Reg. 20273, effective NOV 5 1998.

Section 1785.17 Prime Farmlands

a) Scope
   1) This Section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations on prime farmlands historically used for cropland.
   2) This Section does not apply to:
      A) Lands on which surface coal mining and reclamation operations are conducted pursuant to any permit issued prior to August 3, 1977; or
      B) Lands on which surface coal mining and reclamation operations are conducted pursuant to any renewal or revision of a permit issued prior to August 3, 1977; or

C) Lands included in any existing surface coal mining operations for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:

i) Such lands are part of a single continuous surface coal mining operation begun under a permit issued before August 3, 1977; and

ii) The permittee had a legal right to mine the lands prior to August 3, 1977, through ownership, contract, or lease but not including an option to buy, lease or contract; and

iii) The lands contain part of a continuous recoverable coal seam that was being mined in a single continuous mining pit (or multiple pits if the lands are proven to be part of a single continuous surface coal mining operation) begun under a permit issued prior to August 3, 1977.

3) For the purposes of this Section:

A) "Renewal" of a permit shall mean a decision by the Department to extend the time by which a permittee may complete mining within the boundaries of the original permit and "revision" of the permit shall mean a decision by the Department to allow changes in the method of mining operations within the original permit area, or the decision of the Department to allow amendment, pursuant to State law, prior to June 1, 1982, or other incidental boundary changes to the original permit;

B) A pit shall be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad, or powerline or similar crossing;

C) A single continuous surface coal mining operation is presumed to consist only of a single continuous mining pit under a permit issued prior to August 3, 1977, but may include non-contiguous parcels if the operator can prove by clear and convincing evidence that, prior to August 3, 1977, the non-contigous parcels were part of a single permitted operation. For the purpose of the paragraph, clear and convincing evidence includes, but is not limited to, contracts, leases, deeds or other properly executed documents (not including options) that specifically treat separate parcels as one surface coal mining operation.

4) All applicants for an exemption shall supply the Department with a scale map of the area proposed to be exempted, delineating all prime farmland soils and showing the total number of acres proposed for exemption to the nearest acre, and the numbers of acres of each prime farmland soil type in the area proposed to be exempted.

b) Application contents--reconnaissance inspection.

1) All permit applications, whether or not prime farmland is present, shall include the results of a reconnaissance inspection of the proposed permit area to indicate whether prime farmland exists. The reconnaissance inspection shall be either a review of an existing soil survey for the proposed permit area or an on-site inspection of the proposed permit area. The Department shall consult with the Natural Resources Conservation Service to determine the nature and extent of the required reconnaissance inspection.

2) If the reconnaissance inspection establishes that no land within the proposed permit area is prime farmland historically used for cropland, the applicant shall submit a statement that no prime farmland is present. The statement shall identify the basis upon which such a conclusion was reached.

3) In those cases where an on-site inspection of the proposed permit area was the type of reconnaissance inspection conducted, the applicant shall have a soil survey made of the lands within the permit area which the reconnaissance inspection indicates could be prime farmland. In those cases where a review of an existing soil survey was the type of reconnaissance inspection conducted, the applicant shall have the soil survey revised, if necessary, to meet the standards of subsection (c)(1). Soil surveys of the detail used by the Natural Resources Conservation Service for operational conservation planning shall be used to identify and locate prime farmland soils, as specified in subsection (c)(1)(A).

A) If the soil survey indicates that no prime farmland soils are present within the proposed permit area, subsection (b)(2) shall apply.

B) If the soil survey indicates that prime farmland soils are present within the proposed permit area, subsection (c) shall apply.

c) Application contents for prime farmland.

All permit applications for areas in which prime farmland has been identified, within the proposed permit area, shall include the following:

1) A soil survey of the permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures set forth in U.S. Department of Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1993);

A) These publications are hereby incorporated by reference as they exist on the date of adoption of this Part. Agriculture Handbooks 436 (Soil Taxonomy) and 18 (Soil Survey Manual) are on file and available for inspection at the Office of Surface Mining and Reclamation (OSMRE) Central Office, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D.C., at each OSM Technical Center and Field Office. Copies of these publications may also be obtained by written request to the above locations. Copies

of these documents are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, Stock Number 001-000-04611-0 (Soil Survey Manual) and Stock Number 001-000-04612-8 (Soil Taxonomy). In addition, these documents are available for inspection at the national, state, and local offices of the Natural Resources Conservation Service, U.S. Department of Agriculture (USDA) and at the Federal Register Library, 1100 L. Street, N.W., Washington, D.C. Copies of these documents will be available for public review and copying at cost at the Office of the Secretary of State, and at the Springfield and Benton office of the Land Reclamation Division of the Department.

B) The soil survey shall include a description of soil mapping units and a representative soil profile as determined by the Natural Resources Conservation Service, including, but not limited to, soil horizon depths, pH, and range of soil densities for each prime farmland soil map unit within the permit area. Other representative soil profile descriptions from the locality, prepared according to the standards of the National Cooperative Soil Survey, may be used if their use is approved by the State Conservationist of the Natural Resources Conservation Service. The Department shall request the operator to provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technological capability to restore the prime farmland within the permit area to the soil reconstruction standards of 62 Ill. Adm. Code 1823.

2) A plan for soil reconstruction, replacement and stabilization for the purpose of establishing the technological capability of the mine operator to comply with the requirements of 62 Ill. Adm. Code 1823.

3) Scientific data, such as agricultural school studies, for areas with comparable soils, climate, and management that demonstrate that the proposed method of reclamation, including the use of soil mixtures or substitutes, if any, will achieve, within a reasonable time, levels of yield equivalent to, or higher than, those of nonmined prime farmland in the surrounding area.

4) The productivity prior to mining, including the average yield of food, fiber, forage, or wood products obtained under a high level of management.

d) Consultation with the State Conservationist.

1) Before any permit is issued for areas that include prime farmlands, the Department shall consult with the State Conservationist of the Natural Resources Conservation Service. The State Conservationist shall provide for the review of, and comment on the proposed method of soil reconstruction in the plan

submitted under subsection (c). If the State Conservationist considers those methods to be inadequate, he or she shall suggest revisions resulting in more complete and adequate reconstruction. In keeping with the time limitations imposed by these regulations, the State Conservationist's response will be expected within ~~thirty (~~ 30~~)~~ days after ~~of~~ the last publication of the newspaper advertisement placed by the applicant. The State recognizes that the permit cannot be issued without the required consultation with USDA.

2) The State Conservationist shall provide to the Department a list of prime farmland soils, their location, physical and chemical characteristics, crop yields, and associated data necessary to support adequate prime farmland soil descriptions.

3) The State Conservationist shall assist the Department in determining the adequacy of all soil surveys required in subsection (b)(1).

e) Issuance of permit.

A permit for the mining and reclamation of prime farmland may be granted by the Department, if it first finds, in writing, upon the basis of a complete application, that:

1) The approved proposed post-mining land use of these prime farmlands will be cropland;

2) The permit incorporates as specific conditions the contents of the plan submitted under subsection (c), after consideration of any revisions to that plan suggested by the State Conservationist under subsection (d);

3) The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management; ~~and~~

4) The proposed operations will be conducted in compliance with the requirements of 62 Ill. Adm. Code 1823 and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of the regulatory program; ~~and~~

5) The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the Department and the consent of all affected property owners within the permit area must be obtained.

(Source: Amended at 22 Ill. Reg. 20273, effective NOV 5 1998)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights

2) Code Citation: 62 Ill. Adm. Code 1774

3)

Section Number:	Adopted Action:
1774.11	Amend
1774.13	Amend

4) Statutory Authority: Implemented and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720]

5) Effective Date of Amendments: November 5, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this amendment contain incorporations by reference? No

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal published in Illinois Register: 22 Ill. Reg. 5313 (March 20, 1998)

10) Has JCAR issued a Statement of Objection to these rules? No

11) Difference(s) between proposal and final version:

a) In Section 1774.11(b), "(Act)" has been changed to read "(federal Act)"; in subsection (c), "working days of" has been changed to "working days after"; in subsection (b)(3), "1773.19(b)(1) and (3)" has been stricken and replaced with "1773.19(a)(3)(A) and (C)"; in subsection (d), "1774.13" has been stricken.

b) All numbering has been simplified.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this amendment replace an emergency rule currently in effect? No

14) Are there any amendments pending of this Part? No

15) Summary and Purpose of Amendment: Section 1774.11(a) has been corrected to reflect the merging of the Department of Mines and Minerals into the Department of Natural Resources.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

Section 1774.13(b)(3) has been changed to correct errors in referenced regulations.

16) Information and questions regarding this adopted amendment shall be directed to:

Karen Jacobs, Legal Counsel
Department of Natural Resources
524 South Second Street
Springfield, IL 62701
217/782-1809

The full text of the Adopted Amendments begins on the next page:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1774
REVISION; RENEWAL; AND TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS

Section
1774.1 Scope and Purpose
1774.11 Department Review of Permits
1774.13 Permit Revisions
1774.15 Permit Renewals
1774.17 Transfer, Assignment, or Sale of Permit Rights

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 11 Ill. Reg. 8469, effective July 1, 1987; amended at 14 Ill. Reg. 11900, effective January 1, 1991; amended at 15 Ill. Reg. 17284, effective January 1, 1992; amended at 17 Ill. Reg. 11083, effective July 1, 1993; amended at 20 Ill. Reg. 2118, effective January 19, 1996; amended at 22 Ill. Reg. 20280, effective NOV 5 1998.

Section 1774.11 Department Review of Permits

a) The Illinois Department of Natural Resources ~~Mines--and--Minerals~~ (Department) shall review each permit issued and outstanding under the regulatory program during the term of the permit. This review shall occur not later than the middle of each permit term and as follows:
   1) Permits with a term longer than five ~~(5)~~ years shall be reviewed no less frequently than the permit midterm or every five ~~(5)~~ years, whichever is more frequent.
   2) Permits with variances granted in accordance with 62 Ill. Adm. Code 1785.14 (mountaintop removal) and 62 Ill. Adm. Code 1785.18 (variance for delay in contemporaneous reclamation requirement in combined surface and underground mining operations) shall be reviewed no later than three ~~(3)~~ years from the date of issuance of the permit unless, for variances issued in accordance with 62 Ill. Adm. Code 1785.14, the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the permit.
   3) Permits containing experimental practices issued in accordance with 62 Ill. Adm. Code 1785.13 and permits with a variance from approximate original contour requirements in accordance with 62 Ill. Adm. Code 1785.16 shall be reviewed as set forth in the permit or at least every ~~two-and-one-half-(~~ 2 1/2~~)~~ years from the date of issuance as required by the Department, in accordance with 62 Ill. Adm. Code 1785.13(g) and 1785.16(c), respectively.

b) After the review required by subsection (a) above, or at any time, the Department may, by order, require revision of a permit in accordance with Section 1774.13 to ensure compliance with the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) (federal Act) and the regulatory program.

c) Any order of the Department requiring revision of a permit shall be based upon written findings and shall be subject to the provisions for administrative and judicial review in 62 Ill. Adm. Code 1847.3. Copies of the order shall be sent to the permittee within five ~~(5)~~ working days after ~~of~~ issuance.

d) Permits may be suspended or revoked in accordance with 62 Ill. Adm. Code 1840 through 1845.

(Source: Amended at 22 Ill. Reg. 20280, effective NOV 5 1998)

Section 1774.13 Permit Revisions

a) During the term of a permit, the permittee may submit an application to the Department for a revision of the permit. Such application may be made on the standard Department permit form; however, only those sections of the form which pertain to the revision in question must be completed.

b) Application Requirements and Procedures.
   1) The Department will approve or disapprove applications for insignificant revisions within ~~ninety-(~~ 90~~)~~ days after receipt of the application; applications for significant revision will be acted upon in accordance with 62 Ill. Adm. Code 1773.13 and 1773.15.
   2) A significant revision to a permit shall be obtained for changes in the surface coal mining or reclamation operations described in the original application and approved under the original permit, when such changes constitute a significant departure from the method of conduct of mining or reclamation operations contemplated by the original permit. For purpose of these requirements, significant departures from the methods or conduct of mining or reclamation operations include any change in such mining or reclamation operations, except the following, if not contemplated or provided for in the original permit:
      A) For surface mines, changes of direction of mining or location of mining equipment within the permit area;
      B) Substitution of mining equipment designed for the same purpose, the use of which is not detrimental to achievement of final reclamation or subsidence control;
      C) For underground mines, any change in direction or location of mining within the permit area or shadow area, in response to unanticipated events;
      D) Any other change in operations, methods, or conduct of mining described in writing to the Department which the

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

Department excuses in writing from requirement of revision on a case-by-case basis after determining that the described change will have no significant potential adverse impact on the achievement of final reclamation plans or subsidence control plans or upon the surrounding area;

E) Any alteration in the reclamation plan or reclamation operations which does not involve significant delay or significant change in land use described in writing to the Department and excused from this requirement of revision on a case-by-case basis. A significant revision shall be required for land use changes involving greater than 5% of the original total permit acreage. Alternative land use proposals shall comply with 62 Ill. Adm. Code 1816.133 or 1817.133, and shall be approved only after consultation with the landowner or the land management agency with jurisdiction over the lands. The 5% limit shall be a cumulative total from permit issuance until final bond release, except as follows:

i) The 5% limit shall restart upon the issuance of a significant revision that addresses all previous land use changes approved under this Part; and

ii) The total permit acreage used to determine the 5% limit shall include incidental boundary revisions (IBRs) if the IBRs have been addressed previously in a significant revision; or

F) Any temporary change in operations, subsidence control or reclamation plans necessitated by unanticipated and unusually adverse weather conditions, other acts of God, strikes, or other cause beyond the reasonable control of the permittee, after review and approval by the Department in writing, provided that all steps specified by the Department to maximize environmental protection are taken.

3) All significant permit revision applications shall meet the requirements of 62 Ill. Adm. Code 1773.13, 1773.19(a)(3)(A) and (C) ~~(b)(1) and (3)~~ and 1778.21.

c) No application for a permit revision shall be approved unless the application demonstrates and the Department finds that reclamation as required by the Act and the regulatory program can be accomplished, applicable requirements under 62 Ill. Adm. Code 1773.15(c) which are pertinent to the revision are met, and the application for a revision complies with all requirements of the Act and the regulatory program.

d) Extensions of the permit area, except for incidental boundary revisions, shall be made by application for a new permit, and shall not be approved under this Part. Extensions of the shadow area, except for incidental boundary revisions, shall be made and approved pursuant to the requirements of this Part. Application for incidental boundary revisions shall be made pursuant to subsection ~~1774.13~~(a) above. Incidental boundary revisions are those which:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1) Constitute a relatively small percentage of the initial permit acreage;

2) Are contiguous with the permit or shadow area acreage, except that isolated long-term support facilities associated with underground mining activities need not be contiguous provided such facilities do not include coal preparation or coal waste disposal areas. Non-contiguous incidental boundary revisions shall be subject to the performance standards of 62 Ill. Adm. Code 1817.182;

3) Are required for the orderly and continuous mining operation;

4) Would be reclaimed in conformity with the initial plan, except where provided under subsection (d)(2) above;

5) For the purpose of this section, incidental boundary changes are described as follows:

Original Permit Acres	Maximimum Size of Boundary Changes-Acres
Up to 10	1
Up to 25	2.5
Up to 50	5
Up to 75	7.5
Up to 100	10
Over 100	20

The maximum size for acreage additions to approved non-contiguous incidental boundary revision areas, as described in subsection (d)(2) above, shall be based upon the original boundary revision acreage, not the original permit acreage;

6) Notice of an incidental boundary revision application shall be published in a local newspaper in the area of the proposed activities. The notice shall describe the general area of the proposed activities and shall state the name and business address of the permittee, the address of the Department at which written comments on the application may be submitted and the closing date of the comment period. In no case shall the public comment period be less than seven ~~(7)~~ days. In order to process the incidental boundary revision application, proof of such publication must be submitted to the Department. The notice requirements of this subsection shall not apply to unplanned subsidence areas.

e) A determination as to what constitutes a significant departure shall be made by the Department in consultation with the permittee. Changes which do not alter the final reclamation or mining plan are considered minor and do not require permit revision. However, any request for such changes shall be included in a written request to the Department.

(Source: Amended at 22 Ill. Reg. 20280, effective NOV 5 1998)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Special Permanent Program Performance Standards--Operations On High Capability Lands

2) Code Citation: 62 Ill. Adm. Code 1825

3) Section Number: 1825.11 — Adopted Action: Amend

4) Statutory Authority: Implemented and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720]

5) Effective Date of Amendments: November 5, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this amendment contain incorporations by reference? No

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal published in Illinois Register: 22 Ill. Reg. 5319 (March 20, 1998)

10) Has JCAR issued a Statement of Objection to these rules? No

11) Difference(s) between proposal and final version:

All numbering has been simplified.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this amendment replace an emergency rule currently in effect? No

14) Are there any amendments pending of this Part? No

15) Summary and Purpose of Amendment:

Section 1825.11 has been revised to require that crop testing on high capability land be initiated under the same time frame requirements as prime farmland due to their similarities. In addition, changes have been made to reflect agency name changes.

16) Information and questions regarding this adopted amendment shall be directed to:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

Karen Jacobs, Legal Counsel
Department of Natural Resources
524 South Second Street
Springfield, IL 62701
(217)782-1809

The full text of the Adopted Amendments begins on the next page:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1825
SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS--
OPERATIONS ON HIGH CAPABILITY LANDS

Section
1825.11 High Capability Lands: Special Requirements
1825.12 High Capability Lands: Soil Removal
1825.13 High Capability Lands: Soil Stockpiling
1825.14 High Capability Lands: Soil Replacement

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; emergency amendment at 6 Ill. Reg. 8502, effective July 1, 1982, for a maximum of 150 days; codified at 8 Ill. Reg. 9363; amended at 6 Ill. Reg. 9987, effective September 3, 1982; amended at 10 Ill. Reg. 9628, effective July 1, 1986; amended at 11 Ill. Reg. 8526, effective July 1, 1987; amended at 20 Ill. Reg. 2130, effective January 19, 1996; amended at 22 Ill. Reg. 20286, effective NOV 5 1998.

Section 1825.11 High Capability Lands: Special Requirements

All high capability lands to be mined and reclaimed shall meet the following requirements, or meet the requirements of 62 Ill. Adm. Code 1816.133:

a) A permit shall be obtained for these operations as required by 62 Ill. Adm. Code 1773;

b) Darkened surface soil materials to be used in the reconstruction of high capability lands shall be removed before drilling for blasting or mining or other surface disturbances, in accordance with Section 1825.12 and in a manner that prevents mixing or contaminating these materials with undesirable material. Where removal of soil materials results in erosion that may cause air and water pollution, the Illinois Department of Natural Resources ~~Mines---and---Minerals~~ (Department) shall specify methods to control erosion of exposed overburden;

c) Revegetation success on high capability lands shall be measured in accordance with 62 Ill. Adm. Code 1816.116, except that the five ~~(5)~~ year period of responsibility for revegetation shall commence at the date of initial planting of the crop being grown only in cases where the operator has chosen to show success of revegetation by using the land to grow crops. Measurement of success of revegetation shall be initiated within ten years after completion of backfilling and final grading on high capability land; and

d) The requirements of this Part are in addition to the other

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF ADOPTED AMENDMENTS

requirements of these regulations.

(Source: Amended at 22 Ill. Reg. 20286, effective NOV 5 1998)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Training, Examination and Certification of Blasters

2) Code Citation: 62 Ill. Adm. Code 1850

3)

Section Number:	Adopted Action:
1850.13	Amend
1850.14	Amend
1850.15	Amend
1850.16	Amend

4) Statutory Authority: Implemented and authorized by the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720]

5) Effective Date of Amendments: November 5, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this amendment contain incorporations by reference? No

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal published in Illinois Register:
22 Ill. Reg. 5336 (March 20, 1998)

10) Has JCAR issued a Statement of Objection to these rules? No

11) Difference(s) between proposal and final version:

a) In the Authority note, added "the" before the word "Surface".

b) In Section 1850.13, "30 CFR Part 850" has been changed to "30 CFR 850".

c) In Section 1850.14(a), "dates, times," has been changed to "dates and times"; in subsection (b), "at this time those persons" has been changed to "at this time of those persons".

d) In Section 1850.15(d), "of" has been changed to "after".

e) In Section 1850.16(b)(2), "actions" has been changed to "action" and "requirements" has been changed to "requirement"; in subsection (b)(3), "30days of" has been changed to "30 days after".

f) All numbering has been simplified.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

13) Will this amendment replace an emergency rule currently in effect? No

14) Are there any amendments pending of this Part? No

15) Summary and Purpose of Amendment:

Section 1850.13(a) clarifies that the Department may also provide the necessary training required for blaster certification. Section 1850.14(a) and (b) deals with the scheduling of examinations and reexaminations for certification. These proposed revisions will clarify when and how the Department schedules examinations and reexaminations.

Section 1850.15(a) deals with the acceptance of applications by the Department. These proposed revisions will clarify when and how the applications are approved. Section 1850.16(b)(2) is a typographical correction.

16) Information and questions regarding this adopted amendment shall be directed to:

Karen Jacobs, Legal Counsel
Department of Natural Resources
524 South Second Street
Springfield, IL 62701
(217)782-1809

The full text of the Adopted Amendments begins on the next page:

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

PART 1850
TRAINING, EXAMINATION AND CERTIFICATION OF BLASTERS

Section
1850.5 Definition
1850.12 Applicability
1850.13 Training
1850.14 Examination
1850.15 Application and Certification
1850.16 Denial, Issuance of Notice of Infraction, Suspension, Revocation, and other Administrative Actions
1850.17 Judicial Review (Repealed)

AUTHORITY: Implementing and authorized by the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.; and 30 CFR 816, 817 and 850) and the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720].

SOURCE: Adopted at 10 Ill. Reg. 3018, effective March 15, 1986; amended at 20 Ill. Reg. 2151, effective January 19, 1996; amended at 22 Ill. Reg. 20290, effective NOV 5 1998.

Section 1850.13 Training

a) Training required herein, for those persons not previously trained in the subjects required herein, shall be conducted by the Department, the operator or his representative. The operator's representative may include, but is not limited to junior colleges, consultants, and explosives manufacturers. The training must meet the requirements of this Section.

b) The training for blasters certification shall include instruction in:
1) The design and layout of blasts, including geology, topography and the proper use of delays.
2) Control of ground vibration.
3) Control of flyrock and air blast.
4) Design and loading of boreholes.
5) Priming and boosting.
6) Tamping and stemming, including methods and materials.
7) Blast initiation systems.
8) The use of blasting machines.
9) The use of circuit testing equipment.
10) The general properties of explosives, including blasting agents, and selection criteria.
11) Ground vibration, air blast and monitoring.
12) The use of ground vibration and air blast records as blast design factors.
13) The need for accurate reports and blasting logs and their proper preparation.
14) Current Illinois and Federal law and regulation pertaining to blasting at the mine site, including 62 Ill. Adm. Code 1780.13, 1816.11(f), 1816.61 to 1816.68, 1817.61 to 1817.68; this Part; 62 Ill. Adm. Code 220.130; the Illinois Explosives Act [225 ILCS 210]; 30 CFR 816.61 to 816.68, ~~(~~48 Fed. Reg. 9806-9807, 9492, 9809, 44780 (1983), 817.61 to 817.68, 48 Fed. Reg. 9809-9811, 9492, 44781 (1983), 30 CFR ~~Part~~ 850, 48 Fed. Reg. 9492 (1983); 30 CFR 56.6000-56.6250, 50 Fed. Reg. 5040 (1985), 30 CFR 57.6000-57.6250, 50 Fed. Reg. 4082 (1985), 36 Fed. Reg. 9634 (1971); 43 Fed. Reg. 12320 (1978).
15) Planning for unpredictable blasting hazards to the public and mine personnel. Illustrative example are adverse weather, stray electrical currents, flyrock, radio frequency energy, and misfires.
16) Signs, warning signals and control of the potential flyrock area.
17) Blasting plan requirements.
18) Pre-blast and condition surveys and their use in blast design.
19) Required blasting notices.
20) Training and certification requirements.
21) Handling, transportation and storage of explosives.
22) New technology as it develops and is implemented in the field. The Department shall advise operators of new technology which should be included in future training programs.

c) The blaster shall provide direction and on-the-job training to all non-certified blasting personnel under his supervision.

(Source: Amended at 22 Ill. Reg. 20290, effective NOV 5 1998)

Section 1850.14 Examination

a) Written examinations for blaster certification shall be administered ~~at least semi-annually, but not more than quarterly,~~ on dates~~,~~ and times~~,~~ and at locations announced by the Department via ~~news releases, and~~ direct communication with operators and individuals who request in writing to be so notified. ~~Such notification shall be made at least sixty (60) days prior to the scheduled date of the examination.~~ All persons scheduled for a regular examination session will be so notified at least one ~~(1)~~ week prior to the scheduled exam date.

b) Reexaminations shall be scheduled, if needed, for those persons who do not pass the regularly scheduled examination. ~~The reexamination shall be scheduled approximately forty five (45) days after each regular examination.~~ The Department shall also allow for examination at this time of those persons who have newly applied for certification ~~at least thirty (30) days prior to the scheduled reexamination date.~~ All

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

persons scheduled for examination or reexamination during the reexamination session will be so notified at least one ~~(1)~~ week prior to the scheduled reexamination session.

c) If the applicant cannot attend the examination or reexamination session for which he or she is scheduled, the applicant shall so inform the Department at least one ~~(1)~~ day in advance of the examination date. Failure to do so will result in the application being rejected, and the applicant having to reapply for certification. Any person who cannot attend such a session and who informs the Department in accordance with this Section will be scheduled for the next examination or reexamination session.

d) Applicants for blaster certification shall be examined in the topics set forth in Section 1850.13(b).

20290

(Source: Amended at 22 Ill. Reg. _____, effective NOV 5 1998)

Section 1850.15 Application and Certification

a) Each applicant shall submit a completed application for certification on forms supplied by the Department. ~~In order to be scheduled for the next examination session, the application must be received by the Department not less than thirty (30) days prior to that examination date. The Department shall review each application promptly and complete the review of each application not less than fifteen (15) days following the date of receipt of the application.~~ Any applicant whose completed application has been received, reviewed and accepted by the Department ~~more than fifteen (15) days~~ prior to a regularly scheduled examination session shall be scheduled for that session. ~~Any applicant whose application has been received, reviewed, and accepted less than fifteen days before a regularly scheduled session may be included with the next regularly scheduled session or the next reexamination session.~~ The following documents shall be included with the completed application form:

1) A notorized statement from the applicant's employer or other person, including, but not limited to a certified blaster or fellow employee, having personal knowledge of the applicant's blasting experience, and affirming that the applicant has had at least two ~~(2)~~ years' blasting experience.

2) Proof that the applicant has successfully completed a blaster training course or courses that cover the material listed in Section 1850.13(b).

b) The Department shall review each application, including required documents, for completeness and the accuracy of the statements contained in the application and required documents. The Department's acceptance of an application shall be based on the applicant's compliance with the requirements of this Part.

c) Each applicant shall be required to pass a written examination

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

established by the Department. The examination shall be based on the requirements of Section 1850.13(b). The minimum passing score shall be ~~seventy percent (70%)~~ correct answers. The Department retains the sole right to determine whether any or all responses to examination questions are correct.

d) Any applicant whose application is denied shall be so informed in writing, within ~~thirty (30)~~ days after ~~of~~ the date the applicant is found to be not qualified. Reason(s) for such denial shall be included with the notification. Each applicant who meets the requirements of subsection (a) above and who passes the examination required in subsection (b) above shall be issued a blaster certificate as soon as practicable thereafter, but not more than ~~forty five (45)~~ days after the examination date. Any applicant who meets the requirements of Section 1850.15(a), but who does not pass the examination, shall be so notified within ~~fifteen (15)~~ days after ~~of~~ the examination date. That person may, upon written request, review his or her examination at the Department's Springfield office. Such request must be made and the review completed not less than ten ~~(10)~~ days prior to the reexamination date for which the applicant is scheduled. The review must be done during the Department's regular business hours. Any person who does not pass the examination shall be scheduled for the next reexamination session, pursuant to Section 1850.14(b).

e) An employed blaster shall have readily available for inspection his or her certificate at the mine site.

f) A temporary blaster certificate will be issued to any individual who applies to the Department for such certification and who provides a photocopy of his or her valid blaster certificate issued in another state with an Office of Surface Mining approved certification program, or the name of the state where the certificate was issued and the certificate number. The period of the temporary blaster certificate shall not exceed six months from the date of issuance. Such a temporary certificate shall be issued only once to any individual in any continuous five ~~(5)~~ year period.

g) Each certificate shall be valid for five ~~(5)~~ years from the date of issuance. Recertification following expiration shall be in accordance with the application, examination, and certification requirements of this Part.

h) Blaster certification shall not be assigned or transferred.

i) Blasters shall not delegate their responsibility to any individual who is not a certified blaster.

j) The blaster shall take reasonable precaution to protect his or her certificate from loss, theft or unauthorized duplication. Such loss, theft or duplication shall be reported to the Department without delay.

(Source: Amended at 22 Ill. Reg. 20290, effective NOV 5 1998)

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

Section 1850.16 Denial, Issuance of Notice of Infraction, Suspension, Revocation, and other Administrative Actions

a) The Department shall deny an application for, or revoke or suspend a certificate under the provisions of this Section if the Department finds that the applicant or certificant is, or was at the time of application or issuance, a person convicted of a felony under the laws of this or any other jurisdiction within the prior five ~~(~~5~~)~~ years, or who has been a patient in a mental institution within the prior five ~~(~~5~~)~~ years. The Department, when determining whether to revoke or suspend and when determining the length of a suspension, shall in addition to other factors, consider the nature of the felony of which the applicant was convicted, or the condition for which the applicant was confined to a mental institution, as well as the length of time since the conviction or confinement.

b) Notice of Infraction

1) The Department shall, when in the best interest of protecting public safety and public and private property, issue to the blaster a written notice of infraction, requiring remedial action, when, on the basis of any inspection, the Department determines that the blaster has committed any of the following infractions:

A) Noncompliance with Section 3.13 of the State Act [225 ILCS 720/3.13], 62 Ill. Adm. Code 1780.13, 1816.11(f), 1816.61 to 1816.68, 1817.61 to 1817.68, this Part, 62 Ill. Adm. Code 220.130, the Illinois Explosives Act [225 ILCS 210], 30 CFR 816.61 to 816.68, ~~(~~48 Fed. Reg. 9806-9807, 9492, 9809, 44780 (1983), 30 CFR 817.61 to 817.68, 48 Fed. Reg. 9809-9811, 9492, 44781 (1983), 30 CFR ~~Part~~ 850, 48 Fed. Reg. 9492 (1983), 30 CFR 56.6000-56.6250, 50 Fed. Reg. 5040 (1985), 30 CFR 57.6000-57.6250, 50 Fed. Reg. 4082 (1985), 36 Fed. Reg. 9634 (1971) or 43 Fed. Reg. 12320 (1978).

B) Providing false information or a misrepresentation to obtain certification.

C) Unlawful use in the workplace of or current addiction to alcohol, narcotics, or other dangerous drugs.

D) Noncompliance with any lawful order issued under the authority of the Surface Mining Control and Reclamation Act (30 U.S.C. 1201 et seq.), Section 3.13 of the State Act, 62 Ill. Adm. Code 1780.13, 1816.11(f), 1816.61 to 1816.68, 1817.61 to 1817.68, 1840.2, 1840.12, or this Part.

2) The maximum time allowed to abate the infraction by completing the remedial action shall be stated in the notice and shall include consideration of the nature of the infraction, as well as the availability of resources to complete the abatement. Remedial <u>action</u> ~~actions~~ may include, but need not be limited to, a <u>requirement</u> ~~requirements~~ to receive additional training or undergo reexamination to demonstrate competence. A copy of such notice shall be forwarded to the blaster's employer. Any such notice may be terminated when the remedial action has been completed, modified to correct deficiencies or errors or make other changes in the notice or to change the required abatement date, or vacated if the infraction did not occur or occurred as the result of sabotage by persons other than the blaster.

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

3) The blaster may file a request for review with the Department, and if desired, a hearing within ~~thirty-(~~ 30~~)~~ days <u>after</u> ~~of~~ the receipt of the notice of infraction. If a hearing is requested, the hearing shall be conducted in accordance with 62 Ill. Adm. Code 1847.4(e) and (g) through (p) and shall be held at one of the Department's offices. The Department shall give at least five ~~(~~5~~)~~ days notice of the date, time and location of the hearing to the blaster, his or her employer, the Director, Office of Surface Mining, and any person who filed a report which led to the notice that was issued.

4) The filing of a request for hearing shall not act as a stay of the remedial actions required as part of the notice of infraction.

c) Notice to Show Cause

1) The Department, upon a finding of a willful commission of an infraction by the blaster, shall issue to the blaster a written notice to show cause why his certification should not be suspended or revoked for a specified period (not to exceed the term of the certificate).

2) The blaster shall have ~~twenty-one-(~~ 21~~)~~ days from the receipt date of the notice or other time period necessary for adequate response as may be set out in the notice, in which to file an answer and request a hearing. If the blaster files an answer to the show cause order and requests a hearing, a public hearing shall be provided and conducted in accordance with 62 Ill. Adm. Code 1847.4(e) and (g) through (p). The Department shall give ~~thirty--(~~ 30~~)~~ days written notice of the date, time and location of the hearing to the Director, Office of Surface Mining, the blaster, and the blaster's employer, and any person who filed a report which led to the order that was issued.

3) If the Department determines that the infraction resulting from the willful act on the part of the blaster creates an imminent danger to the health or safety of the public or imminent damage to public or private property, the Department shall immediately issue a temporary suspension of the blaster's certificate. The temporary suspension shall be in writing, and shall, with reasonable specificity, set forth the nature of the infraction and the imminent danger or damage incurred or about to be incurred. Such suspension shall be subject to a hearing to be provided not less than ~~fifteen-(~~ 15~~)~~ days after the blaster's receipt of the temporary suspension. The hearing shall determine whether the suspension shall be continued, terminated or whether

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

the certificate shall be revoked. Temporary suspension issued under the authority of this Subsection shall not exceed ~~fifteen (~~ 15~~)~~ days. The hearing shall be conducted in accordance with 62 Ill. Adm. Code 1847.4(e) and (g) through (p) and shall be held at one of the Department's offices.

4) Upon written notice of revocation, including the findings upon which the notice is based, the blaster shall without delay surrender the revoked certificate to the Department.

(Source: Amended at 22 Ill. Reg. 20290, effective ~~NOV 5 1998~~)

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Motor Fuel Tax

2) Code Citation: 86 Ill. Adm. Code 500

3) Section Numbers: 500.235 — Adopted Action: Amendment

4) Statutory Authority: 35 ILCS 505

5) Effective Date of Amendment(s): December 1, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this amendment contain incorporations by reference? No

8) A copy of the amendment, including any material incorporated by reference, is on file in the Department's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: May 8, 1998, 22 Ill. Reg. 7895

10) Has JCAR issued a Statement of Objections to these Amendments? No

11) Differences between proposal and final version: The only changes made were the ones agreed upon with JCAR. The changes made were grammar and punctuation or technical. No substantive changes were made.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this amendment replace an emergency amendment currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Amendment(s): Amends the Motor Fuel Tax regulations by providing that claimants may be required to file purchase documentation in conjunction with claims based upon motor fuel used for a nontaxable purpose.

16) Information and questions regarding this adopted amendment shall be directed to:

Gina Roccaforte
Associate Counsel
Illinois Department of Revenue
Legal Services Office

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

101 West Jefferson
Springfield, Illinois 62794
(217) 782-6996

The full text of the Adopted Amendment begins on the next page:

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 500
MOTOR FUEL TAX

SUBPART A: DEFINITIONS

Section
500.100 Definitions
500.101 Definition of Receiver (Repealed)
500.102 Definition of Loss (Repealed)

SUBPART B: MOTOR FUEL TAX

Section
500.200 Basis and Rate of the Motor Fuel Tax
500.201 Licensure
500.202 Basis and Rate of Tax Payable by Receivers
500.203 Monthly Returns
500.204 Report of Loss of Motor Fuel
500.205 Daily Gallonage Record
500.210 Documentation of Tax-free Sales of Motor Fuel Made by Licensed Distributors and Suppliers
500.215 Documentation of Tax-free Sales of Fuel Made by Licensed Receivers
500.220 Vehicles of Distributors Transporting Petroleum Products (Repealed)
500.225 Other Vehicles (Repealed)
500.230 Motor Fuel Consumed by Distributors, Special Fuel Consumed by Suppliers and Fuel Consumed by Receivers
500.235 Claims for Refund - Invoices
500.240 Sales of Special Fuel - Variation in Usage
500.245 Estimated Claims
500.250 Claimants Owning Motor Vehicles (Repealed)
500.255 Detailed Answers
500.260 Revocation of License, Etc. - Notice - Hearing
500.265 Distributors' and Suppliers' Claims for Credit or Refund
500.270 Receivers' Claims for Credit
500.275 Procedure When Tax-Paid Motor Fuel is Returned to Licensee for Credit
500.280 Sales of Motor Fuel to Municipal Corporations Owning and Operating Local Transportation Systems
500.285 Sales of Motor Fuel to Certain Privately-Owned Public Utilities Owning and Operating Transportation Systems in Metropolitan Areas
500.290 When Purchaser's License Number With Department on Invoices Covering Sales of Special Fuel is Required (Repealed)
500.295 Cost of Collection - Determination (Repealed)

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

SUBPART C: MOTOR FUEL USE TAX

Section
500.300 Licensure
500.301 Special Motor Fuel Permits and Decals (Repealed)
500.302 Motor Carrier's Quarterly Report (Repealed)
500.305 Licenses and Decals
500.310 Display of License and Decals
500.315 Renewal of Decals and Licenses
500.320 Single Trip Permits
500.325 Licensure of Lessors and Lessees
500.330 Cancellation of License
550.335 Quarterly Payment and Reporting
550.340 Credits and Refunds
550.345 Records Requirements
550.350 Revocation
550.355 Protest Procedures
550.360 Audits

SUBPART D: TIMELY MAILING TREATED AS TIMELY FILING AND PAYING

Section
500.400 General Information
500.405 Due Date That Falls on Saturday, Sunday or a Holiday

SUBPART E: GENERAL REQUIREMENTS APPLICABLE TO ALL LICENSES AND PERMITS ISSUED UNDER THE MOTOR FUEL TAX LAW

Section
500.500 Licenses and Permits Are Not Transferable
500.501 Blenders' Permits Are Not Transferable (Repealed)
500.505 Changes of Corporate Officers

SUBPART F: INCORPORATION BY REFERENCE OF RETAILERS' OCCUPATION TAX

Section
500.600 Incorporation of the Retailers' Occupation Tax Regulations by Reference

AUTHORITY: Implementing the Motor Fuel Tax Law [35 ILCS 505] and authorized by Section 39b2 of the Civil Administrative Code of Illinois [20 ILCS 2505/39b2].

SOURCE: Adopted July 3, 1931; amended at 2 Ill. Reg. 1, p. 97, effective December 31, 1978; amended at 3 Ill. Reg. 13, p. 98, effective March 25, 1979; amended at 4 Ill. Reg. 28, p. 568, effective June 1, 1980; codified at 8 Ill.

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

Reg. 8612; amended at 10 Ill. Reg. 4540, effective February 28, 1986; amended at 11 Ill. Reg. 10295, effective May 18, 1987; emergency amendment at 13 Ill. Reg. 13271, effective August 7, 1989, for a maximum of 150 days; emergency expired January 4, 1990; amended at 14 Ill. Reg. 6826, effective April 19, 1990; amended at 15 Ill. Reg. 6305, effective April 16, 1991; amended at 15 Ill. Reg. 13538, effective August 30, 1991; recodified at 18 Ill. Reg. 4451; amended at 19 Ill. Reg. 3008, effective February 28, 1995; amended at 19 Ill. Reg. 17195, effective December 18, 1995; amended at 20 Ill. Reg. 10168, effective July 16, 1996; amended at 22 Ill. Reg. 2253, effective January 9, 1998; amended at 22 Ill. Reg. 14917, effective August 3, 1998; amended a 22 Ill. Reg. 16322, effective August 25, 1998; amended at 22 Ill. Reg. 20299, effective DEC 1 1998.

SUBPART B: MOTOR FUEL TAX

Section 500.235 Claims for Refund - Invoices

a) Claims for the refund of Motor Fuel Tax imposed by Section 2 of the Law, by persons other than a distributor or supplier, shall be made to the Department of Revenue, duly verified by the claimant, upon forms prescribed by the Department. The ~~Except as provided in subsection (c) of this Section, the~~ Department of Revenue will not approve claims for refund of Motor Fuel Tax unless such claims can be directly ~~are~~ supported by invoices, sales slips, statements of account, or monthly statements (herein referred to as "purchase documentation"). ~~or sales slips (commonly referred to as the top copy).~~ Reproductions may be submitted in lieu of originals, provided they are legible. However, the Department may require original purchase documentation ~~invoices~~ to verify purchases. Purchase documentation may be electronically generated by the claimant's fuel supplier. Electronically generated purchase documentation shall meet all applicable electronic storage requirements of Sections 130.805 and 130.825 of the Retailers' Occupation Tax regulations (86 Ill. Adm. Code 130). Manifests ~~or monthly statements~~ will not be treated as purchase documentation ~~invoices~~.

b) All purchase documentation ~~sales slips or invoices~~ must contain the following information:
   1) Date of delivery;
   2) name and address of purchaser (which must be the name of the claimant);
   3) name and address of seller;
   4) number of gallons purchased and price per gallon;
   5) Illinois Motor Fuel Tax as separate item if the purchase documentation is from other than a retail outlet; and
   6) receipt of payment. (Only paid purchase documentation is ~~invoices are~~ acceptable in connection with claims for refund.) Refunds will only be issued when payment of tax is exactly correlated to the purchase documentation ~~invoice~~ for which the

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

claim is being filed.

c) Claimants must retain purchase documentation ~~file--invoices--or--sales slips~~ in conjunction with claims based upon motor fuel used for a nontaxable purpose. In making a claim, claimants must show total purchases, deducting the gallonage used upon public highways or waters, the difference being the net amount upon which the claim is based. ~~Only--invoices--directly--supporting--the--nontaxable-use-are required-to-be-submitted.--However,-claimants~~ Claimants must retain among their books and records documentation of all purchases, payments, bulk storage withdrawals and proof of usage for a period equivalent to that during which an assessment can be issued under the Law, from the date of issuance of the claim or refund. This information must be made available to Department employees upon request. Failure to keep or provide such records will ~~may~~ result in denial of claims and recovery of any claims paid. In addition, the Department may recover any claims erroneously paid.

d) Where the claimant has lost purchase documentation ~~invoice(s)~~ through inadvertence or an act of God, the Department will permit the claimant to submit an ~~his~~ affidavit in lieu of such purchase documentation ~~invoice~~ in support of the claim, if the affidavit contains the same information which the purchase documentation ~~invoice~~ was required to contain, plus a statement of facts explaining the loss of the purchase documentation ~~invoice~~ and justifying the substitution of an affidavit for the purchase documentation ~~invoice~~.

e) Claims for full reimbursement of tax paid on motor fuel must be filed not later than one year after the date on which the tax was paid by the claimant. If, however, a claim for such reimbursement otherwise meeting the requirements of the Act is filed more than one year but less than 2 years after that date, the claimant shall be reimbursed at the rate of 80% of the amount to which he would have been entitled if his claim had been timely filed.

f) Claims accompanied by purchase documentation ~~sales-slips--or--invoices upon--the--face--of~~ which demonstrate ~~there-is~~ evidence of change of name, date or gallonage or other evidence of fraud, or which is ~~are~~ illegible, will be disallowed in their entirety.

g) Any person who purchases motor fuel in Illinois and uses that motor fuel in another state and that other state imposes a tax on the use of such motor fuel shall be reimbursed and repaid the amount of Illinois tax paid on the motor fuel used in such other state. Reimbursement and repayment shall be made by the Department upon receipt of adequate proof of taxes paid to another state and the amount of motor fuel used in that state. Evidence supporting the claim must include both a copy of the tax return filed with such other state and a copy of the cancelled check or a receipt acknowledging payment of the tax due on said tax return.

h) *Claims for refunds for the motor fuel tax imposed by Section 2 of the Law approved by the Department shall be paid within 90 days after receipt of a complete and correct application for such a refund. If*

DEPARTMENT OF REVENUE

NOTICE OF ADOPTED AMENDMENTS

refunds are paid after the expiration of the 90 day period, the Department shall also pay from the Motor Fuel Tax Fund to the taxpayer interest at the rate and in the manner set by the Uniform Penalty and Interest Act [35 ILCS 505/15.1].

(Source: Amended at 22 Ill. Reg. 20299, effective Dec 1 1998)

SECRETARY OF STATE

NOTICE OF ADOPTED RULES

1) Heading of the Part: Standard Procurement

2) Code Citation: 44 Ill. Adm. Code 2000

3)

Section Numbers:	Adopted Action:
2000.01	New
2000.05	New
2000.08	New
2000.10	New
2000.15	New
2000.25	New
2000.525	New
2000.1005	New
2000.1510	New
2000.1560	New
2000.1570	New
2000.1580	New
2000.2005	New
2000.2010	New
2000.2012	New
2000.2015	New
2000.2020	New
2000.2025	New
2000.2030	New
2000.2035	New
2000.2036	New
2000.2037	New
2000.2038	New
2000.2040	New
2000.2043	New
2000.2044	New
2000.2045	New
2000.2046	New
2000.2047	New
2000.2050	New
2000.2055	New
2000.2060	New
2000.2560	New
2000.2570	New
2000.2800	New
2000.3005	New
2000.4000	New
2000.4005	New
2000.4010	New
2000.4015	New
2000.4020	New
2000.4025	New
2000.4030	New

SECRETARY OF STATE

NOTICE OF ADOPTED RULES

2000.4035	New
2000.4040	New
2000.4045	New
2000.4505	New
2000.4510	New
2000.4530	New
2000.4535	New
2000.4540	New
2000.4545	New
2000.4570	New
2000.5013	New
200Q.5015	New
2000.5020	New
2000.5030	New
2000.5035	New
2000.5310	New
2000.5510	New
2000.5520	New
2000.5530	New
2000.5540	New
2000.5550	New
2000.6010	New
2000.6500	New
2000.6510	New
2000.7000	New
2000.7010	New
2000.7015	New
2000.7020	New
2000.7025	New
2000.7030	New

4) Statutory Authority: The Illinois Procurement Code [30 ILCS 500], as amended by PA 90-572.

5) Effective Date of Rule: November 9, 1998

6) Does this rulemaking contain an automatic repeal date: No

7) Does this rule contain incorporations by reference: No

8) A copy of the adopted rule, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register:

22 Ill. Reg. 11695; July 10, 1998

SECRETARY OF STATE

NOTICE OF ADOPTED RULES

10) Has JCAR issued a State of Objections to these amendments? No

11) Differences between proposal and final version:

1. Index, Subpart R, Section 2000.5540, change "Law" to "Statute".

2. Section 2000.10(d)(1) after "boards" add ", community colleges and their governing boards and school districts. This provision applies to contracts between governmental entities; it does not allow State agencies to utilize contracts established by other governmental entities."

3. Section 2000.15, Definitions, add: "Consulting Services" Services provided by a business or person as an independent contractor to advise and assist an agency in solving specific management or programmatic problems involving the organization, planning, direction, control or operations of a State agency. The services may or may not rise to the level of professional and artistic as defined in the Code and this Part.". and

4. in "Contract" change after "Illinois Commerce Commission or the' to read" Federal Communications Commissions, bonds, or contracts relating to bonds issued by or on behalf of a State agency when the contractor or vendor is neither selected nor paid by the State agency. The term "contract" includes, but is not limited to, purchase, installment purchase, lease and rental contracts.".

5. In "Service" delete the period and add after the citation "and the financing thereof".

6. Section 2000.525 add second paragraph to read: "The Office of the Secretary of State shall procure its capital needs in a manner substantially in accordance with the requirements of this Part and will promulgate rules specifically for capital construction that are no less restrictive than the requirements of the Code. Until specific Secretary of State rules can be promulgated for this purpose, the Office will conform its capital procurement activities to the requirements of the Procurement Code by following the administrative rules of the Capital Development Board (44 Ill. Adm. Code 910, 950 and 980) and the Department of Central Management Services (44 Ill. Adm. Code 1).".

7. Section 2000.1580, add after the period "No direct solicitation shall be made prior to the date any required notice first appears in the Bulletin.".

8. Section 2000.2005(a)(1) after word 'receipt' change "or" to "and".

SECRETARY OF STATE

NOTICE OF ADOPTED RULES

9. delete "even if on time" and add after the period "A bid that is delivered to the wrong location but that is subsequently delivered to the correct location by the date and time specified shall be considered, but the agency shall not be responsible for ensuring such subsequent delivery.".

10. (b)(2) - after "offerors" add "who submitted timely bids or proposals".

11. after the period add "This extension does not provide an opportunity for others to submit bids or proposals.".

12. Section 2000.2005(f)(1)(B)and Section 2000.2050, add "Economically Feasible" after "Sole" and

13. (o)(3), add "to the Procurement Officer" after "submit".

14. Section 2000.2010(e)(1), change "$10,000" to "the small purchase amount".

15. Section 2000.2015(b), after "categories" add "(note that the following services, if they are professional or artistic, must be procured pursuant to Section 2000.2035 of this Part)".

16. (e)(1), change "which" to "that".

17. (g)(4) after 'best and final offers', add "(e.g., to clarify the terms of an offer)" before the period, and

18. after "Procurement Officer" add: "(e.g., depending on the number of potential vendors and the availability of the item being procured)".

19. Section 2000.2020(a)(2), change "non-renewal" to "non-renewable".

20. (d), change "$10,000" to "the small purchase amount".

21. Section 2000.2025(b)(1)(2)(3)(4)and (5) delete "where", and

22. (b)(6), delete "and".

23. (b)(7)(, change the period to "; and", and

24. After (b)(7), add "8) changes to existing contracts (see subsection (c)).".

25. (c) add "1)" at the beginning, and

SECRETARY OF STATE

NOTICE OF ADOPTED RULES

26. After last sentence add:
"2) A change (whether in cost or rate) that does not exceed the applicable small purchase limit as defined in Section 2000.2020 of this Part, or that is an emergency as defined in Section 2000.2030 of this Part, may be made in accordance with procedures governing those Sections and need not comply with these sole source procedures. A change in the length of the contract that does not exceed 30 days and other minor, immaterial changes to the scope or administrative provisions of a contract shall not be considered changes subject to these sole source procedures.".

27. Section 2000.2030 - a), after "Part" add "and that is not a sole source procurement under Section 2000.2025 of this Part".

28. b) after 'conditions', add "Procurements may be made under this Section 2000.2030 in the following circumstances:".

29. (b)(1) Change to "Traditional circumstances include but are not limited to:".

30. (b)(1) Delete (E), (F), (I), (J) and (K) and relabel remaining subsections respectively.

31. In new (b)(1)(G), add "or" after the semicolon.

32. In new (b)(1)(G), change "services" to "items", and

33. (b)(2) add:

"3) Extension to Allow Competition. Extending an existing contract for such period of time as is needed to conduct a competitive method of source selection where terminating or allowing the contract to terminate would not be advantageous to the State.
4) Quick Purchase.
A) A supplier announces bankruptcy, cessation of business, or loss of franchise, or gives other similar reason so that making a purchase immediately is more advantageous to the State than instituting a competitive procurement under the provisions of the Code for the supplies or services;
B) Items are available on the spot market or at discounted prices for a limited time so that good business judgment mandates a purchase immediately to take advantage of the availability and price;
C) Availability of rare items, such as books of historical value;
D) The procurement is for entertainment.".

SECRETARY OF STATE

NOTICE OF ADOPTED RULES

34. Section 2000.2035(a)(1), after the closing bracket add "and except as provided in Section 2000.2035(e)", and

35. (a)(2), replace "525" with "500", and

36. (e), add "of" after "Services", and

37. Change "SPO" to "CPO" in Section 2000.2035(f), 2000.2043(b)(1), 2000.2044(d).

38. Section 2000.2035(m), delete "acceptable" and after "proposals" add "timely submitted",

39. After (o), add:
"p) Small, sole source and emergency procurements of professional and artistic services under the jurisdiction of an SPO do not require approval of the CPO to proceed. Any notices shall be published by the SPO.", and

40. change "p)" to "q)".

41. Section 2000.2036(c), (c)(1), (c)(2), change "Master" to "Term and Condition".

42. (c)(2), after "processing" add "sole source, emergency or" and add a period after "procurement", and

43. (f), after "loans" add "or to remain in compliance with federal requirements", and

44. (g)(1), delete "1)".

45. Section 2000.2037(c), change "report" to "record".

46. Section 2000.2043(c)(1), change "30 ILCS 605/7a" to "The State Property Control Act [30 ILCS 605/7a]".

47. Section 2000.2045, add:
"1) The CPO shall identify by publication in the Bulletin the categories of supplies and services (including professional and artistic services) for which the CPO may prequalify vendors of those supplies and services. The CPO is not required to prequalify vendors but may do so when determination of a vendor's qualifications prior to procurement would be advantageous to the State.".

48. Change "1)" to "2)", and

SECRETARY OF STATE

NOTICE OF ADOPTED RULES

49. After the word 'bulletin' add "The notice shall alert vendors that failure to participate in the prequalification process may result in the vendor being ineligible to receive contracts.".

50. Change "2)" to:
"3) When prequalifying a vendor, the CPO may limit prequalifications to determining whether a vendor has been and is likely to be "responsible" using the criteria set forth in Section 2000.2046 of this Part.", and

51. (a)(2) after 'procurement' add:
"4) When prequalifying a vendor, the CPO may consider factors tailored to a specific procurement or type of procurement that shall be announced in the Bulletin.", and

52. (a)(3), after the 'prequalified' add "If eligibility for the procurement will be limited to prequalified vendors, the Invitation for Bids, Request for Proposals or other procurement request shall state that fact.".

53. (b)(1) Change to:
"1) Any prequalification of vendors of professional and artistic services shall include, at a minimum, a specified level of:
A) education;
B) experience; and
C) technical ability;
and may require certification or licensure, or membership in professional associations.".

54. Section 2000.2046(b)(1), change "include" to "may include, but are not limited to.", and

55. Delete "a prospective vendor", and

56. (b)(1)(H), add:
"I) is current in payment of all State of Illinois taxes, including the unemployment insurance tax.", and

57. (e), change "SPO"to "Procurement Officer".

58. Section 2000.2050(a)(2), delete "SPOs" and insert "the Procurement Officer", and

59. (d)(3) add:
"4) Small and Emergency Procurements. Brand name only specifications may be used when procuring items under the small (Section 2000.2020) and emergency (Section 2000.2025) provisions of this Part.", and

SECRETARY OF STATE

NOTICE OF ADOPTED RULES

60. (n)(1), change "certain State publications" to "publications issued by the Secretary of State", and

61. (n)(4), change "tourism, conservation, recycling and the State fairs" to "literacy, organ donation, senior services and the State Library".

62.Section 2000.2060 delete paragraph (a)(2), and

63. Change "3)" to "2)", and

64. (e)(1), after "State" add "or is by mutual agreement", and

65. (e)(3), change "Where" to "When".

66. Section 2000.2560(a)(3), add "at least" before "$200" and add "at least" before "$2000".

67. (f) after "f)" add: "Printing Contracts 1)", change the subsection labels from "1)", "2)" and "3)" to "A)", "B)" and "C)" respectively, and change "4)" to "2)".

68. Section 200.2570(a)(G), place the last sentence as a separate sentence at the subsection 4) text level of indentation.

69. Section 2000.3005, add "(71 Ill. Adm. Code 2000)" after "SOS".

70. Section 2000.4010(e)(2) change "rule" to "Part", and

71. (f)(1), change "they are" to "the lease is", and

72. (a), add "standards" after "accessibility".

73. Section 2000.4045, change "the Standard Procurement Rules" to "this Part".

74. Section 2000.4505, add after the period "When any such preference is utilized, the Invitation for Bids, Request for Proposals, or other procurement request shall identify the preference and the conditions associated with such use. Subsequent Sections of this Subpart O identify conditions for the use of certain of the statutory preferences.".

75. Section 2000.4540(a), after "Act" add "(15 USC 2001)".

76. Section 2000.4545(a), after "small business" add "located in Illinois".

SECRETARY OF STATE

NOTICE OF ADOPTED RULES

77. (e)(5), Change to:
"5) If the business is any combination of retailer, wholesaler, or construction business, then the annual sales for each component may not exceed the amounts shown in subsection (e)(3). For example, a business that is both a retailer and a wholesaler may not have total sales exceeding $9,000,000, and the retail component may not exceed $1,500,000 and the wholesale component may not exceed $7,500,000. If the business is also a manufacturer, in addition to meeting the annual sales requirement, the number of manufacturing employees may not exceed the number shown in subsection (e)(4).".

78. Section 2000.5013(b), after the period add "In the case of a for-profit corporation, distributable income means "dividends". When calculating entitlement to distributable income, the entitlement shall be determined at the end of the company's most recent fiscal year.".

79. Section 2000.5030(b), change "CPOs" to "the CPO" and after "SPOs" add "shall identify in writing their designees whose job, or whose position description, is at least 51% directly related to State procurement. The following activities are directly related to State procurement: drafting specifications, preparing Invitations for Bids and Requests for Proposals, evaluating responses to Invitations for Bids and Requests for Proposals, negotiating contracts and supervising any of the foregoing."

80. Section 2000.5035, add:
"a) For purposes of Section 50-35(a) of the Code, an "offer from responsive bidders or offerors" means only those offers that are received using an Invitation for Bids or Request for Proposals under Section 20-10, 20-15 or 20-35, or Article 35, of the Code. Disclosures are not required in small, sole source or emergency procurements.
b) For purposes of:
1) Section 50-35(b) of the Code, "parent entity" means a person who owns 100% of the bidding entity.
2) Section 50-35(b)(1) of the Code, "contractual employment of services" means any contract to provide services to the State, whether as independent contractor or employee, which is by and between the State and the named individual.", and

81. Relabel the subsections respectively, and

82. (a), after "after" add "payment of all".

SECRETARY OF STATE

NOTICE OF ADOPTED RULES

83. (b), after "guard services" add ", but excludes contracts with employees who are exempt from the Code under Section 1-10(b)(4)".

84. (c), change "Section 20-10" to "Sections 20-10, 20-15 and 20-35".

85. Section 2000.5520(b), (c), (e) and (f), change "SPO" to "CPO", and

86. (b), change "for" to "with respect to".

87. Section 2000.5530(c)(2), change the comma to a period after "contract" and change "such" to "Such" and start the rest of the sentence as a new sentence at the subsection c) text level of indentation.

88. (d)(1), (2), (4), and (5), change "In the event the" to "The", and

89. (d)(3), change "In the event any"to "Any".

90. (d)(6), change "In the event of any" to "Any".

91. Section 2000.5550(c)(1), change "14" to "7 calendar".

92. Section 2000.7025(a), change "officer" to "Procurement Officer", and

93. (c) change "cognizant official" to "person requesting the audit under Section 2000.7020(b)".

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will these amendments replace an emergency rule amendment currently in effect? Yes

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rules:
Amends procedures for procurement as now required by PA 90- 572.

16) Information and questions regarding these adopted rules shall be directed to:

Jack Gooding
Room 124, Howlett Building
Springfield, Illinois 62756
217/782-0828

The full text of the Adopted Rules begins on the next page:

SECRETARY OF STATE

NOTICE OF ADOPTED RULES

TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY MANAGEMENT
SUBTITLE B: SUPPLEMENTAL PROCUREMENT RULES
CHAPTER XXV: SECRETARY OF STATE

PART 2000
STANDARD PROCUREMENT

SUBPART A: GENERAL

Section
2000.01 Title
2000.05 Policy
2000.08 Illinois Procurement Code
2000.10 Application
2000.15 Definition of Terms Used in This Part
2000.25 Property Rights

SUBPART B: PROCUREMENT RULES

Section
2000.525 Rules

SUBPART C: PROCUREMENT AUTHORITY

Section
2000.1005 Conduct of Procurements

SUBPART D: PUBLICIZING PROCUREMENT ACTIONS

Section
2000.1510 Illinois Procurement Bulletin
2000.1560 Supplemental Notice
2000.1570 Error in Notice
2000.1580 Direct Solicitation

SUBPART E: SOURCE SELECTION AND CONTRACT FORMATION

Section
2000.2005 General Provisions
2000.2010 Competitive Sealed Bidding
2000.2012 Multi-Step Sealed Bidding
2000.2015 Competitive Sealed Proposals
2000.2020 Small Purchases
2000.2025 Sole Economically Feasible Source Procurement
2000.2030 Emergency Procurements
2000.2035 Competitive Selection Procedures for Professional and Artistic Services

SECRETARY OF STATE

NOTICE OF ADOPTED RULES

2000.2036 Other Methods of Source Selection
2000.2037 Tie Bids and Proposals
2000.2038 Mistakes
2000.2040 Cancellation of Solicitations; Rejection of Bids or Proposals

SUBPART F: SUPPLIERS, PREQUALIFICATION AND RESPONSIBILITY

Section
2000.2043 Suppliers
2000.2044 Vendor List/Required Use
2000.2045 Prequalification
2000.2046 Responsibility

SUBPART G: BID, PROPOSAL AND PERFORMANCE SECURITY

Section
2000.2047 Security Requirements

SUBPART H: SPECIFICATIONS AND SAMPLES

Section
2000.2050 Specifications and Samples

SUBPART I: CONTRACT TYPE

Section
2000.2055 Types of Contracts

SUBPART J: DURATION OF CONTRACTS

Section
2000.2060 Duration of Contracts - General

SUBPART K: CONTRACT MATTERS

Section
2000.2560 Prevailing Wage
2000.2570 Equal Employment Opportunity; Affirmative Action

SUBPART L: CONTRACT PRICING

Section
2000.2800 All Costs Included

SUBPART M: CONSTRUCTION AND CONSTRUCTION RELATED PROFESSIONAL SERVICES

Section
2000.3005 Construction and Construction Related Professional Services

SECRETARY OF STATE

NOTICE OF ADOPTED RULES

SUBPART N: REAL PROPERTY LEASES AND CAPITAL IMPROVEMENT LEASES

Section
2000.4000 Applicability
2000.4005 Requests for Space/Department Responsibilities
2000.4010 General Acquisition Procedures
2000.4015 Acquisition of Leases by RFI
2000.4020 Leases Acquired by Other Methods
2000.4025 Renewal or Extension of Lease in Effect Prior to July 1, 1998
2000.4030 Renewal of Leases Entered into After July 1, 1998
2000.4035 Purchase Options
2000.4040 Lease Administration
2000.4045 Emergency Lease Procurement

SUBPART O: PREFERENCES

Section
2000.4505 Procurement Preferences
2000.4510 Resident Bidder Preference
2000.4530 Correctional Industries
2000.4535 Sheltered Workshops for the Disabled
2000.4540 Gas Mileage
2000.4545 Small Business
2000.4570 Contracting with Businesses Owned and Controlled by Minorities, Females and Persons with Disabilities

SUBPART P: ETHICS

Section
2000.5013 Conflicts of Interest
2000.5015 Negotiations for Future Employment
2000.5020 Exemptions
2000.5030 Revolving Door
2000.5035 Disclosure of Financial Interests and Potential Conflicts of Interest

SUBPART Q: CONCESSIONS

Section
2000.5310 Concessions

SUBPART R: COMPLAINTS, PROTESTS AND REMEDIES

Section
2000.5510 Complaints Against Vendors
2000.5520 Suspension
2000.5530 Resolution of Contract Controversies
2000.5540 Violation of Statute or Rule

SECRETARY OF STATE

NOTICE OF ADOPTED RULES

2000.5550 Protests

SUBPART S: SUPPLY MANAGEMENT AND DISPOSITIONS

Section
2000.6010 Supply Management and Dispositions

SUBPART T: GOVERNMENTAL JOINT PURCHASING

Section
2000.6500 General
2000.6510 No Agency Relationship

SUBPART U: MISCELLANEOUS PROVISIONS OF GENERAL APPLICABILITY

Section
2000.7000 Severability
2000.7010 Government Furnished Property
2000.7015 Inspections
2000.7020 Records and Audits
2000.7025 Written Determinations
2000.7030 No Waiver of Sovereign Immunity

AUTHORITY: The Illinois Procurement Code [30 ILCS 500] (see P.A. 90-572).

SOURCE: Emergency Rules adopted at 22 Ill. Reg. 12208, effective July 1, 1998, for a maximum of 150 days; adopted at 22 Ill. Reg. 20306, effective NOV 9 1998.

SUBPART A: GENERAL

Section 2000.01 Title

This Part may be cited as the Secretary of State's Procurement Rules.

Section 2000.05 Policy

All procurements for the Office of the Secretary of State (SOS) shall be accomplished in the most economical, expeditious and commercially reasonable manner that is in accordance with statute, this Part and other applicable rules.

Section 2000.08 Illinois Procurement Code

Articles 1, 15, 20, 25, 35, 40, 45, 50 and 53 of the Illinois Procurement Code [30 ILCS 525/Arts. 1, 15, 20, 25, 35, 40, 45, 50 and 53] (the Code) will be referenced in this Part as though applicable to the SOS, and the needs shall be procured in a manner substantially in accordance with those provisions of the

Code, except to the extent otherwise provided in this Part. For purposes of this Part, any reference in the Code or this Part to the Chief Procurement Officer (CPO) means the Secretary of State or his/her designee. The Secretary of State may appoint one or more State Purchasing Officers (SPOs).

Section 2000.10 Application

a) The Code and this Part apply to those procurements for which the vendors were first solicited on or after July 1, 1998.

b) Procurements for which vendors were first solicited on or before June 30, 1998, shall be conducted pursuant to legal requirements in effect at the time of the solicitation. The terms and conditions and the rights and obligations under contracts resulting from such procurements shall not be impaired.

c) A solicitation occurs on or before June 30, 1998, as follows:

1) When advertising was required in the Official State Newspaper, the first advertisement must run no later than June 30, 1998.

2) When advertising was not required:

A) if the procurement was advertised, even though advertising was not required, the first advertisement must have run no later than June 30, 1998;

B) if the procurement was by direct solicitation by mail, the solicitation must have been postmarked or placed in the control of a private carrier no later than June 30, 1998;

C) if the procurement was by direct solicitation by fax, the fax must show a transmission date no later than June 30, 1998;

D) if the procurement was solicited in-person or by telephone, the solicitation must have occurred no later than June 30, 1998, and the State officer or employee who made the solicitation must state in writing when the procurement was discussed and must name the party with whom the discussion took place.

3) In all circumstances, the solicitations must be for the procurement of particular needs. A general discussion to determine if there is any interest on the part of a State agency in the supplies or services of a vendor or vendors, or on the part of a vendor or vendors in providing the supplies or services, is not considered a solicitation.

d) The Code and this Part do not apply to:

1) *contracts between the State and its political subdivisions or other governments, or between State governmental bodies except as specifically provided in this Code.* (For purposes of this subsection (d)(1), "governmental bodies" includes the State universities and their governing boards, community colleges and their governing boards and school districts. This provision applies to contracts between governmental entities; it does not allow State agencies to utilize contracts established by other

governmental entities.);

2) *grants;*

3) *hiring of an individual as employee and not as an independent contractor, whether pursuant to an employment code or policy or by contract directly with that individual;*

4) *collective bargaining contracts;*

5) *purchase of real estate; or*

6) *contracts necessary to prepare for anticipated litigation, enforcement actions, or investigations, provided that the chief legal counsel to the Secretary of State shall give his or her prior approval* [30 ILCS 500/1-10]. Anticipated litigation is that which a State agency may prosecute or defend before a court or administrative body and actions necessary to prepare for and conduct the effective legal prosecution or defense of litigation, including, but not limited to, contracting for court reporting and contracting for expert witnesses.

Section 2000.15 Definition of Terms Used in This Part

As used throughout this Part, terms defined in the Illinois Procurement Code shall have the same meaning as in the Code and as further defined below, and each term listed in this Section shall have the meaning set forth below unless its use clearly requires a different meaning. Terms may be defined in particular Sections for use in that Section.

"Bid" - The response to an Invitation for Bids.

"Bidder" - Any person who submits a bid.

"Brand Name or Equal Specification" - A specification that uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet State requirements, and that allows the submission of equivalent products.

"Brand Name Specification" - A specification limited to one or more items by manufacturers' names or catalogue numbers.

"Code" - The Illinois Procurement Code [30 ILCS 500].

"Concession" - The right or a lease to engage in a certain activity for profit on the lessor's premises (e.g., a refreshment or parking concession).

"Consulting Services" - Services provided by a business or person as an independent contractor to advise and assist an agency in solving specific management or programmatic problems involving the organization, planning, direction, control or operations of a State

agency. The services may or may not rise to the level of professional and artistic as defined in the Code and this Part.

"Contract" - A contract may be in written or oral form. The term contract as used in the Code and this Part does not include: supplies or services the terms governing which are established by tariff of the Illinois Commerce Commission or the Federal Communications Commission, bonds issued by or on behalf of any State agency, or contracts, other than for "concessions", that the State agency signs, but has no financial obligation to the other parties.

"Contractor" or "Vendor" - The terms contractor and vendor are used interchangeably for purposes of the Code and this Part.

"Day" - Calendar day. In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a State holiday, in which event the period shall run to the end of the next business day.

"DCMS" - The Department of Central Management Services.

"Items" - Anything that may be procured under this Code.

"Invitation for Bids" or "IFB" - *The process by which a purchasing agency requests information from bidders, including all documents, whether attached or incorporated by reference, used for soliciting bids.* [30 ILCS 500/1-15.45]

"Procurement Officer" - The Chief Procurement Officer (CPO) or appropriate State Purchasing Officer (SPO) who conducts the particular procurement, or a designee of either.

"Proposal" - The response to a Request for Proposals.

"Qualified Products List" - An approved list of supplies described by model or catalogue numbers that, prior to competitive solicitation, the State has determined will meet the applicable specification requirements.

"Request for Information" or "RFI" - The process by which a purchasing agency requests information from offerors for all State contracts for leases of real property or capital improvements.

"Request for Proposals" or "RFP" - *The process by which a purchasing agency requests information from offerors, including all documents, whether attached or incorporated by reference, used for soliciting proposals.* [30 ILCS 500/1-15.75]

"Responsible Bidder or Offeror" - A person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability that will assure good faith performance.

"Responsive Bidder or Offeror" - *A person who has submitted a bid that conforms in all material respects to the Invitation for Bids.* [30 ILCS 500/1-85]

"Service" - *The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports or supplies that are incidental to the required performance* [30 ILCS 500/1-15.90] and the financing thereof.

"SOS" - The Office of the Secretary of State.

"Specification" - Any description of the physical, functional, or performance characteristics, or of the nature, of a supply or service. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply or service item for delivery. Unless the context requires otherwise, the terms "specification" and "purchase description" are used interchangeably throughout this Part.

"Specification for a Common or General Use Item" - A specification that has been developed and approved for repeated use in procurements.

"State" - The Office of the Secretary of State.

"Supplies" - *All personal property, including but not limited to equipment, materials, printing, and insurance, and the financing of those supplies.* [30 ILCS 500/1-15.110]

"Unsolicited Offer" - Any offer other than one submitted in response to a solicitation.

Section 2000.25 Property Rights

Receipt of an Invitation for Bids or other procurement document, or submission of any response thereto, or other offer, confers no right to receive an award or contract, nor does it obligate the State in any manner.

SUBPART B: PROCUREMENT RULES

Section 2000.525 Rules

To the extent practicable, the SOS may avail itself of master, scheduled or open-ended contracts established by DCMS; items available from the Paper and Printing Warehouse; and DCMS contracts for telecommunications equipment, software and services, paper and envelopes, and vehicles and vehicle services.

The CPO or SPO may submit purchase requests to DCMS in accordance with rules promulgated by DCMS.
The Office of the Secretary of State shall procure its capital needs in a manner substantially in accordance with the requirements of this Part and will promulgate rules specifically for capital construction that are no less restrictive than the requirements of the Code. Until specific Secretary of State rules can be promulgated for this purpose, the Office will conform its capital procurement activities to the requirements of the Procurement Code by following the administrative rules of the Capital Development Board (44 Ill. Adm. Code 910, 950 and 980) and the Department of Central Management Services (44 Ill. Adm. Code 1).

SUBPART C: PROCUREMENT AUTHORITY

Section 2000.1005 Conduct of Procurements

The Secretary of State or his/her designee shall serve as CPO for purposes of the Code and this Part and may conduct any or all procurements on behalf of the SOS. The CPO may appoint one or more SPOs to conduct procurement in accordance with the terms of the appointment and this Part.

SUBPART D: PUBLICIZING PROCUREMENT ACTIONS

Section 2000.1510 Illinois Procurement Bulletin

Notice of any procurement action required by the Code to be publicized in the Illinois Procurement Bulletin will be forwarded to DCMS for inclusion in the appropriate volume of the Bulletin in accordance with rules promulgated by DCMS (44 Ill. Adm. Code 1).

Section 2000.1560 Supplemental Notice

Publication in the Bulletin may be supplemented by publication elsewhere at the discretion of the SOS.

Section 2000.1570 Error in Notice

When a required publication contains an error, the error may be corrected by a single notice published in the Bulletin.

Section 2000.1580 Direct Solicitation

In addition to giving notice in the Bulletin, the SOS may directly contact prospective vendors by providing copies of Invitations for Bids, Requests for Proposals, or other procurement information. Direct solicitation may be oral or in writing, but care should be taken to ensure that all vendors solicited in this manner receive the same information as provided to others. No direct solicitation shall be made prior to the date any required notice first appears

in the Bulletin.

SUBPART E: SOURCE SELECTION AND CONTRACT FORMATION

Section 2000.2005 General Provisions

a) Late Bids or Proposals, Late Withdrawals and Late Modifications
   1) Definition. Any bid or proposal received after the time and date for receipt, and at other than the specified location, is late. A bid that is delivered to the wrong location but that is subsequently delivered to the correct location by the date and time specified shall be considered, but the agency shall not be responsible for ensuring such subsequent delivery. Any withdrawal or modification of a bid or proposal received after the time and date set for opening of bids or proposals is late. If received at other than the specified location, the submission is late.
   2) Treatment. No late bid or proposal, late modification, or late withdrawal will be considered unless the Procurement Officer, and not a designee, determines it would have been timely but for the action or inaction of State personnel directly serving the procurement activity (e.g., providing the wrong address).
   3) Records. Records shall be made and, in accordance with the State Records Act [5 ILCS 160], kept for each late bid or proposal, late modification, or late withdrawal.
   4) Other Submissions. Any other submission that has a time or date deadline shall be treated in the same manner as a late bid.

b) Extension of Time
   1) The Procurement Officer may, prior to the date or time for submitting or modifying a bid or proposal, extend the date or time for the convenience of the State.
   2) After opening bids or proposals, the Procurement Officer may request bidders or offerors who submitted timely bids or proposals to extend the time during which the State may accept the bids or proposals, provided that, with regard to bids, no other change is permitted. This extension does not provide an opportunity for others to submit bids or proposals.

c) Electronic and Facsimile Submissions
   1) The Invitation for Bids (IFB) or Request for Proposals (RFP) may state that electronic and facsimile machine submissions will be considered if they are received at the designated office by the time and date set for receipt. Any required attachments will be submitted as stated in the IFB or RFP.
   2) Electronic submissions authorized by specific language in the IFB or RFP will be opened in accordance with electronic security measures in effect at the SOS at the time of opening. Unless the electronic submission procedures provide for a secure receipt, vendor assumes risk of premature disclosure due to submission in

unsealed form.

3) Fax submissions authorized by specific language in the IFB or RFP will be placed in a sealed container upon receipt and opened as other submissions. Vendor assumes risk of premature disclosure due to submission in unsealed form.

d) Intent to Submit
The Invitation for Bids or the Request for Proposals may require that vendors submit, by a certain time and date, a notice of their intent to submit a bid or proposal in response to the IFB or RFP. Bids and proposals submitted without complying with the notice of intent requirement may be rejected.

e) Only One Bid or Proposal Received
If only one bid or proposal is received, an award may be made to the single bidder or offeror if the Procurement Officer finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond or there is not adequate time for resolicitation. Otherwise:

1) new bids or offers may be solicited, including under sole source (Section 2000.2025) or emergency (Section 2000.2030) procedures; or

2) the procurement may be canceled.

f) Alternate or Multiple Bids or Proposals

1) Alternate bids or proposals may be accepted if:

A) permitted by the solicitation and in accordance with instructions in the solicitation; or

B) only one vendor responded, in which case the alternate submission may be evaluated and treated in accordance with Section 2000.2025 (Sole Economically Feasible Source Procurement) of this Part; or

C) the low bidder, who has met all requirements of the solicitation, has provided a lower cost alternative that meets all of the material requirements of the specifications.

2) Multiple bids or proposals may be accepted if:

A) permitted by the solicitation and submitted in accordance with instructions in the solicitation; or

B) only one vendor responded, then, one or more of the submissions may be evaluated, provided that, in the case of bids, only the lowest cost bid meeting specifications may be considered.

3) If a vendor clearly indicates a primary submission among alternate or multiple bids or proposals, then that primary submission shall be considered for award as though it were the only bid or proposal submitted by the vendor.

g) Multiple Items
An Invitation for Bids or Request for Proposals may call for pricing of multiple items of similar or related type with award based on individual line item, group total of certain items, or grand total of

all items.

h) "All or None" Bids or Proposals
All or none bids or proposals may be accepted if the evaluation shows an all or none award to be the lowest cost or best value of those submitted.

i) Conditioning Bids or Proposals Upon Other Awards
Any bid or proposal that is conditioned upon receiving award of the particular contract being solicited and one or more other State contracts shall:

1) be rejected unless the vendor removes the condition; or

2) be evaluated and award made to that vendor if the vendor is also independently evaluated as the winner of the other IFBs or RFPs provided the agency need not delay procurement actions to accommodate the vendor's all or none condition.

j) Unsolicited Offers

1) Processing of Unsolicited Offers. The Procurement Officer may consider unsolicited offers and shall have final authority with respect to evaluation, acceptance and rejection of such unsolicited offer.

2) Conditions for Consideration. An unsolicited offer must be in writing and must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the State.

3) Award. An award may not be made based on an unsolicited offer in place of the notice and competition requirements of the Code and this Part except if that unsolicited offer meets the requirements for a small (Section 2000.2020), sole source (Section 2000.2025), or emergency (Section 2000.2030) procurement.

k) Clarification of Bids and Proposals
The Procurement Officer may request that a vendor clarify its bid or proposal as a part of the evaluation process. A vendor shall not be allowed to materially change its bid or proposal in response to a request for clarification. A clarification is not an opportunity to make changes or for submission of best and finals as authorized elsewhere in this Part.

l) Extension of Time on Indefinite Quantity Contracts
The time of performance of an indefinite quantity contract may be extended upon agreement of the parties, provided the extension is for 90 days or less and the Procurement Officer determines in writing that it is not practical to award another contract at the time of such extension.

m) Increase in Quantity on Definite Quantity Contracts

1) The quantity that may be ordered from a definite quantity contract without additional notice and competition may be increased by up to 20% provided the Procurement Officer determines that separate bidding for the additional quantity is not likely to achieve lower pricing. A particular procurement may specify a different percentage.

2) The quantity may be increased by any percentage provided the dollar value of the increase does not exceed the applicable small purchase (Section 2000.2020) threshold.

n) Subsequent Purchase Request
If, within 30 days after making an award to a particular vendor pursuant to a competitive sealed bid on behalf of the SOS, the SPO receives a purchase request for the same item and for the same or lesser quantity, the SPO may contract with that vendor on the same terms and conditions, including price, without additional notice and competition, if such contract is acceptable to the vendor.

o) Assignment, Novation or Change of Name

1) Assignment. No State contract is transferable, or otherwise assignable, without the written consent of the Procurement Officer, provided, however, that a vendor may assign money receivable under a contract after due notice to the State. Assignment may require the execution of a contract with the assignee and in such cases the assignee must meet all requirements for contracting with the State.

2) Recognition of a Successor in Interest; Novation. When in the best interest of the State, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee agree that:

A) the transferee assumes all of the transferor's obligations;

B) the transferee meets all requirements for contracting with the State;

C) the transferor waives all rights under the contract as against the State; and

D) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required by the State, furnish a satisfactory performance bond.

3) Change of Name. A vendor may submit to the Procurement Officer a written request to change the name in which it holds a contract with the State. The name change shall not alter any of the terms and conditions of the contract or the obligations of the vendor.

4) Reports. All change of name or novation agreements under this subsection (o) shall be reported to the CPO of DCMS within 30 days after the date the agreement becomes effective so that the bid list may be updated.

p) Contracting for Installment Purchase Payments, Including Interest
Contracts may provide for installment purchase payments, including interest charges, over a period of time. The interest rate may not exceed that established by law, including the Bond Authorization Act [30 ILCS 305].

q) Use of Source Selection Method that is Not Required
If SOS uses a method of source selection that it is not, by law, required to use (e.g., use of a competitive sealed bid for a small purchase), the SOS is not bound to strict compliance with the

Code and rules governing the method of source selection used.

r) Vendor Signature
A bid or proposal submitted unsigned will be evaluated if the vendor submits a written signature acceptable to the Procurement Officer within the time specified by that officer.

s) Stringing
Dividing or planning procurements to avoid use of competitive procedures (stringing) is prohibited.

t) Confidential Data
Vendors must clearly identify any information that is exempt from the disclosure requirement of the Illinois Freedom of Information Act [5 ILCS 140] and must request special handling of that material.

Section 2000.2010 Competitive Sealed Bidding

a) Application
Competitive sealed bidding is the required method of source selection except as allowed by the Code and this Part. The provisions of this Section apply to every procurement required to be conducted by competitive sealed bidding.

b) The Invitation for Bids

1) Use. The Invitation for Bids is used to initiate a competitive sealed bid procurement.

2) Content. The Invitation for Bids shall include, at a minimum, the following:

A) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the address of the office to which bids are to be delivered, and the maximum time for bid acceptance by the State;

B) the purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements as are not included in the purchase description; and

C) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

3) Incorporation by Reference. The Invitation for Bids may incorporate documents by reference provided that the Invitation for Bids specifies where such documents can be obtained.

c) Bidding Time
Bidding time is the period of time between the date of notice or distribution of the Invitation for Bids and the time and date set for receipt of bids. In each case, bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of 14 days shall be provided unless a shorter time is authorized by the Code or this Part.

d) Bidder Submissions

1) Bid Form. The Invitation for Bids may include a form or format

for submitting bids. If a form or format is specified, vendor shall submit bids as instructed.

2) Bid Samples and Descriptive Literature

A) Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.

B) Unsolicited bid samples or descriptive literature is submitted at the bidder's risk, may not be examined or tested, will not be deemed to vary any of the provisions of the Invitation for Bids, and may not be utilized by the vendor to contest a decision or understanding with the State.

e) Public Notice

1) Publication. Every procurement for supplies and services in excess of the small purchase amount that must be procured using an Invitation for Bids shall be publicized in the Illinois Procurement Bulletin (see Section 2000.1510).

2) Public Availability. A copy of the Invitation for Bids shall be made available for public inspection.

3) Distribution. Invitations for Bids or Notices of the Availability of Invitations for Bids may be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing competition. Notices of Availability shall, at a minimum, indicate where Invitations for Bids may be obtained; generally describe what is needed; and indicate the due date for bids. Where appropriate, the Procurement Officer may require payment of a fee or a deposit for supplying the Invitation for Bids.

f) Pre-Bid Conference

A pre-bid conference may be conducted to enhance understanding of the procurement requirements. The pre-bid conference shall be announced as a part of the Invitation for Bids notice. The conference may be designated as "attendance mandatory" or "attendance optional". The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written modification to the Invitation for Bids. Amendments shall be supplied to all those prospective bidders known to have received an Invitation for Bids. If the conference is mandatory, the amendment shall be supplied to attendees only.

g) Amendments to Invitations for Bids

1) Form. Amendments to Invitations for Bids shall be clearly identified and shall reference the portion of the IFB it amends.

2) Distribution. Amendments shall be made available to all prospective bidders known to have received an Invitation for Bids.

3) Timeliness. Amendments shall be made available within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, the amendment shall extend the response time. If necessary, the response time may be extended by fax or telephone and confirmed in the amendment.

h) Pre-Opening Modification or Withdrawal of Bids

1) Procedure. Bids may be modified or withdrawn by written notice received in the office designated in the Invitation for Bids prior to the time and date set for bid opening.

2) Disposition of Bid Security. If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.

3) Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

i) Receipt, Opening and Recording of Bids

1) Receipt. Upon its receipt, each bid and modification shall be time-stamped but not opened and shall be stored in a secure place until the time and date set for bid opening. If a bid is opened in error, the file shall so state.

2) Opening and Recording

A) Bids and modifications shall be opened publicly at the time, date, and place designated in the Invitation for Bids. Opening shall be witnessed by a State employee or any other person present, but the person opening bids shall not serve as witness. The name of each bidder, the bid price, and such other information as is deemed appropriate by the Procurement Officer, shall be recorded and the name of each bidder read aloud or otherwise made available. The name of the witness shall also be recorded at the opening.

B) The winning bid shall be available for public inspection after award, along with the record of each unsuccessful bid.

3) Confidential Data. The SPO shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data or other information, the bid shall be rejected as nonresponsive.

j) Bid Evaluation and Award

1) General. The contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids, except as permitted in the Code and this Part. The Invitation for Bids shall set forth the requirements and criteria that will be used to determine the lowest responsive bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the Invitation for Bids.

2) Responsibility. Responsibility of prospective vendors is covered

by Section 2000.2046 (Responsibility) of this Part.

3) Responsiveness. A bid must conform in all material respects to the Invitation for Bids.

A) Product or Service Acceptability. The Invitation for Bids shall set forth any evaluation criteria to be used in determining product or service acceptability. It may require the submission of bid samples, descriptive literature, technical data, references, licenses, or other information or material. It may also provide for accomplishing any of the following prior to award:

i) inspection or testing of a product or service prior to award for such characteristics as quality or workmanship;

ii) examination of such elements as appearance, finish, taste, or feel;

iii) other examinations to determine whether it conforms with any other purchase description requirements.

B) The acceptability evaluation is not conducted for the purpose of determining whether one bidder's product or service capability is superior to another, but only to determine that a bidder's offering is acceptable as set forth in the Invitation for Bids. Any bidder's offering that does not meet the acceptability requirements shall be rejected.

4) Determination of Lowest Bidder. Following determination of product or service acceptability as set forth in this subsection (j), bids will be evaluated to determine which bidder offers the lowest cost to the State in accordance with the evaluation criteria set forth in the Invitation for Bids. Only objectively measurable criteria that are set forth in the Invitation for Bids shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost and ownership or life-cycle cost formulas. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible such evaluation factors shall be reasonable estimates based upon information the State has available concerning future use and shall provide for the equitable treatment of all bids. Pricing for optional supplies or services, or for renewal terms, may be considered, particularly when the pricing for such items or terms is unbalanced when compared to other pricing in the bid.

5) Price Negotiation. Negotiations are permitted with the low bidder to obtain a lower price for the item bid.

k) Documentation of Award
Following award, a record showing the successful bidder shall be made a part of the procurement file.

l) Award to Other Than Low Bidder

1) The Procurement Officer, but not a designee, may award to other than the lowest responsible and responsive bidder upon a written determination that award to another bidder is in the State's best interest. The name of the bidder selected, pricing, and the reasons for selecting this bidder instead of the low bidder must be published in the Bulletin.

2) This action may be appropriate when the difference in quality or speed of delivery is so great as compared to the difference in price, and considering the needs of the agency, that a best value award is justified. However, if the difference in price is significant, the Procurement Officer may not utilize this provision.

m) Publicizing Award
The successful bidder shall be notified of award and such notification may be in the form of a letter, purchase order or other clear communication. In procurements over the small purchase limit set in Section 2000.2020 (Small Purchases) of this Part, notice of award shall be published in the Bulletin.

Section 2000.2012 Multi-Step Sealed Bidding

a) Definition. Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the State, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.

b) Conditions for Use. The multi-step sealed bidding method may be used when it is not practical to prepare initially a definitive purchase description that will be suitable to permit an award based on price. Multi-step sealed bidding may be used when it is considered desirable:

1) to invite and evaluate possible diverse technical offers to determine their acceptability to fulfill the purchase description requirements; and

2) to conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description.

c) Pre-Bid Conference in Multi-Step Sealed Bidding
Prior to the submission or evaluation of unpriced technical offers, a pre-bid conference as contemplated by Section 2000.2010(f) (Pre-Bid Conference) may be conducted by the Procurement Officer.

d) Procedure for Phase One of Multi-Step Sealed Bidding

1) Form. Multi-step sealed bidding shall be initiated by the issuance of an Invitation for Bids in the form required by Section 2000.2010 (Competitive Sealed Bidding), except as hereinafter provided. In addition to the requirements set forth in Section 2000.2010, the multi-step Invitation for Bids shall

state:

A) that unpriced technical offers are requested;

B) whether priced bids are to be submitted at the same time as unpriced technical offers; if they are, such priced bids shall be submitted in a separate sealed envelope;

C) that it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;

D) the criteria to be used in the evaluation of the unpriced technical offers;

E) that the Procurement Officer may conduct oral or written discussions of the unpriced technical offers;

F) that the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids.

2) Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers, and they shall be permitted to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the Procurement Officer, a contemplated amendment will significantly change the nature of the procurement, the Invitation for Bids may be canceled in accordance with Section 2000.2040 (Cancellation of Solicitation; Rejection of Bids or Proposals) of this Part and a new Invitation for Bids issued.

3) Receipt and Handling of Unpriced Technical Offers. Unpriced technical offers submitted by bidders shall be opened in the presence of at least one witness. Such offers shall not be disclosed to unauthorized persons.

4) Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:

A) acceptable;

B) potentially acceptable, that is, reasonably susceptible of being made acceptable; or

C) unacceptable, in which case the Procurement Officer shall record in writing the basis for finding an offer unacceptable, notify the vendor and make it part of the procurement file.

5) The Procurement Officer may initiate phase two of the procedure if, in the Procurement Officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without technical discussions. If the Procurement Officer finds discussion of the technical offers is necessary, the Procurement Officer shall commence

discussions of the unpriced technical proposals.

6) Discussion of Unpriced Technical Offers. The Procurement Officer may conduct discussions with any vendor who submits an acceptable or potentially acceptable technical offer. During the course of such discussions, the Procurement Officer shall not disclose any information derived from one unpriced technical offer to any other bidder. Any such bidder may submit supplemental information amending its technical offer at any time until the closing date established by the Procurement Officer. Such submission may be made at the request of the Procurement Officer or upon the bidder's own initiative.

7) Unacceptable Unpriced Technical Offer. When the Procurement Officer determines a bidder's unpriced technical offer to be unacceptable, such offeror shall not be afforded an additional opportunity to supplement its technical offer.

e) Procedure for Phase Two

1) Initiation. Upon the completion of phase one, the Procurement Officer shall either:

A) open priced bids submitted in phase one (if priced bids were required to be submitted) from bidders whose unpriced technical offers were found to be acceptable; or

B) if priced bids have not been submitted, invite each acceptable bidder to submit a priced bid.

2) Conduct. Phase two shall be conducted as any other competitive sealed bid procurement except:

A) no public notice need be given of this invitation to submit priced bids because such notice was previously given;

B) after award, the unpriced technical offer of the successful bidder shall be disclosed as follows: The Procurement Officer shall examine written requests of confidentiality for trade secrets and proprietary data in the technical offer of such bidder to determine the validity of any such requests. If the parties do not agree as to the disclosure of data, the Procurement Officer shall reject the offer. Such technical offer shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data; and

C) unpriced technical offers of bidders who are not awarded the contract shall not be open to public inspection.

Section 2000.2015 Competitive Sealed Proposals

a) Competitive Sealed Proposals may be used whenever permitted by the Code and as described in this Part.

b) The Competitive Sealed Proposal method of source selection may be used to procure the following categories (note that the following services, if they are professional or artistic, must be procured pursuant to Section 2000.2035 of this Part):

SECRETARY OF STATE

NOTICE OF ADOPTED RULES

1) electronic data processing equipment, software, and services;
2) telecommunications equipment, software, and services;
3) consulting services; and
4) employee benefits and management of those benefits.

c) Competitive Sealed Proposals may be used on a case-by-case basis when it is determined by the Procurement Officer that competitive sealed bidding is either not practicable or advantageous.

1) "Practicable" Distinguished from "Advantageous." As used in Section 20-15 (Competitive Sealed Proposals) of the Illinois Procurement Code and in this Section, "practicable" denotes what may be accomplished or put into practical application, and "advantageous" connotes a judgmental assessment of what is in the State's best interest. Competitive sealed bidding may be practicable, that is, reasonably possible, but not necessarily advantageous, that is, in the State's best interest. Before a procurement may be conducted by competitive sealed proposals, the Procurement Officer shall determine in writing that competitive sealed bidding is either not practicable or not advantageous to the State.

2) General Discussion

A) If competitive sealed bidding is not practicable or is not advantageous, competitive sealed proposals should be used.

B) The key element in determining whether use of a proposal is advantageous is the need for flexibility. The competitive sealed proposal method differs from competitive sealed bidding in two important ways:

i) it permits discussions with competing offerors and changes in their proposals, including price; and

ii) it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract.

C) Where evaluation factors involve the relative abilities of offerors to perform, including degrees of experience or expertise, where the types of supplies or services may require the use of comparative, judgmental evaluations to evaluate them adequately, or where the type of need to be satisfied involves weighing aesthetic values to the extent that price is a secondary consideration, use of competitive sealed proposals is the appropriate procurement method.

3) When Competitive Sealed Bidding Is Not Practicable. Competitive sealed bidding is not practicable unless the nature of the procurement permits award to a low bidder who agrees by its bid to perform without condition or reservation in accordance with the purchase description, delivery or performance schedule, and all other terms and conditions of the Invitation for Bids. Factors to be considered in determining whether competitive sealed bidding is not practicable include:

A) whether the contract needs to be other than a fixed-price type;

B) whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;

C) whether offerors may need to be afforded the opportunity to revise their proposals, including price;

D) whether award may need to be based upon a comparative evaluation, as stated in the Request for Proposals, of differing price, quality, and contractual factors in order to determine the most advantageous offering to the State. Quality factors include technical and performance capability and the content of the technical proposal; and

E) whether the primary consideration in determining award may not be price.

4) When Competitive Sealed Bidding Is Not Advantageous. A determination may be made to use competitive sealed proposals if it is determined that it is not advantageous to the State, even though practicable, to use competitive sealed bidding. Factors to be considered in determining whether competitive sealed bidding is not advantageous include:

A) if prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the State; and

B) whether the factors listed in subsection (c)(3) of this Section are desirable, in conducting a procurement, rather than necessary; if they are, then such factors may be used to support a determination that competitive sealed bidding is not advantageous.

d) Content of the Request for Proposals

The Request for Proposals shall be prepared in accordance with Section 2000.2010 (Competitive Sealed Bidding), provided that it shall also include:

1) a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without such discussions; and

2) a statement of when and how price should be submitted.

e) Receipt and Registration of Proposals

1) Proposals and modifications shall be opened publicly at the time, date and place designated in the Request for Proposals. Opening shall be witnessed by a State employee or by any other person present, but the person opening proposals shall not serve as witness. A record shall be prepared that shall include the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the supply or service item offered. The record of proposals shall be open to public inspection after award of the contract.

2) Proposals and modifications shall be opened in a manner to avoid

SECRETARY OF STATE

NOTICE OF ADOPTED RULES

disclosing contents to competitors. Only State personnel and contractual agents may review the proposals prior to award.

f) Evaluation of Proposals

1) Evaluation Factors in the Request for Proposals. The Request for Proposals shall state all of the evaluation factors, including price, and their relative importance.

2) Evaluation. The evaluation shall be based on the evaluation factors set forth in the Request for Proposals. Factors not specified in the Request for Proposals shall not be considered. Numerical rating systems may be used but are not required.

3) Classifying Proposals. For the purpose of conducting discussions, proposals may be initially classified as:

A) acceptable;

B) potentially acceptable, that is, reasonably susceptible of being made acceptable; or

C) unacceptable. Offerors whose proposals are unacceptable shall be so notified promptly.

g) Proposal Discussions with Individual Offerors

1) "Offerors" Defined. For the purposes of Section 20-15(f) (Competitive Sealed Proposals, Discussion with Responsible Offerors and Revisions to Proposals) of the Illinois Procurement Code and of this Section, the term "offerors" includes only those businesses submitting proposals that are acceptable or potentially acceptable. The term shall not include businesses that submitted unacceptable proposals.

2) Purposes of Discussions. Discussions are held to:

A) promote understanding of the State's requirements and the offerors' proposals; and

B) facilitate arriving at a contract that will be most advantageous to the State, taking into consideration price and the other evaluation factors set forth in the Request for Proposals.

3) Conduct of Discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. If during discussions there is a need for any substantial clarification of, or change to, the Request for Proposals, the Request shall be amended to incorporate such clarification or change. Auction techniques (revealing one offeror's price to another) and disclosure of any information from competing proposals are prohibited. Any substantial oral clarification of a proposal shall be reduced to writing by the offeror.

4) Best and Final Offers. The Procurement Officer may request best and final offers from those offerors deemed acceptable after completion of any discussions. Best and final offers shall be submitted by a specified date and time. The Procurement Officer may conduct additional discussions or change the State's requirements and require another submission of best and final offers (e.g., to clarify the terms of an offer). The scope of the best and final and the number of vendors allowed to participate shall be defined by the Procurement Officer (e.g., depending on the number of potential vendors and the availability of the item being procured). If an offeror does not submit either a notice of withdrawal or another best and final offer, that offeror's immediately previous offer will be construed as its best and final offer.

h) Award

An award shall be made by the Procurement Officer pursuant to a written determination showing the basis on which the award was found to be most advantageous to the State, based on the factors set forth in the Request for Proposals.

i) Publicizing Awards

The successful offeror shall be notified of award and such notification may be in the form of a letter, purchase order or other clear communication. When the award exceeds the small purchase limit set in Section 2000.2020 of this Part, notice of award shall be published in the Bulletin.

Section 2000.2020 Small Purchases

a) Application

1) Procurements of $10,000 or less for supplies or services, other than professional and artistic, and $30,000 or less for construction may be made using the method of source selection determined by the Procurement Officer to be most appropriate to the circumstances.

2) Procurements of less than $20,000 for professional and artistic services and that have a non-renewable term of one year or less may be made using the method of source selection determined by the Procurement Officer to be most appropriate to the circumstances.

b) In determining whether a contract is under the limit, the value of the contract for the full term and all optional renewals, determined in good faith, shall be utilized. The stated value of the supplies or services, plus any optional supplies and services, shall be utilized. Where the term is calculated month-to-month or in a similar fashion, the amount shall be calculated for a twelve month period.

c) If only a unit price or hourly rate is known, the contract shall be considered small and shall have a not to exceed limit applicable to the type of procurement (see subsection (a) above).

d) If, after signing the contract, the actual cost of completing the contract is determined to exceed the small purchase amount, and the Procurement Officer determines that a supplemental procurement is not economically feasible or practicable because of the immediacy of the agency's needs or other circumstances, the Procurement Officer must follow the procedures for sole source or emergency procurement,

whichever is applicable, to complete the contract.

e) Procurement requirements shall not be artificially divided to avoid using the other source selection methods set forth in Section 20-5 of the Illinois Procurement Code.

f) If there is a repetitive need for small procurements of the same type, the Procurement Officer shall consider issuing a competitive sealed bid or proposal for procurement of those needs.

Section 2000.2025 Sole Economically Feasible Source Procurement

a) Application
The provisions of this Part apply to procurement from a sole economically feasible source (referred to as sole source) unless the estimated amount of the procurement is within the limit set in Section 2000.2020 (Small Purchases) or unless emergency conditions exist as defined in Section 2000.2030 (Emergency Procurements) of this Part.

b) Conditions for Use of Sole Source Procurement
Sole source procurement is permissible when a requirement is available from only a single supplier or when only one supplier is deemed economically feasible. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or offeror authorized to provide that item. The following are examples of circumstances that could necessitate sole source procurement:
1) the compatibility of equipment, accessories, replacement parts, or service is a paramount consideration;
2) a sole supplier's items are needed for trial use or testing;
3) a sole supplier's item is to be procured for commercial resale;
4) public utility regulated services are to be procured;
5) the item is copyrighted or patented and the item or service is not available except from the holder of the copyright or patent;
6) the procurement of the media for advertising;
7) the procurement of art or entertainment services; and
8) changes to existing contracts (see subsection (c)).

c) Changes
1) Changes to an existing contract that are germane and reasonable in scope and cost in relation to the original contract or program, that are necessary or desirable to complete the contract or program, and that can be best accomplished by the contract holder may be procured under this Section when the Procurement Officer determines that the cost of delay or disruption to the contract or program, and the cost of a new solicitation, clearly indicate that the existing vendor is the sole economically feasible source.
2) A change (whether in cost or rate) that does not exceed the applicable small purchase limit as defined in Section 2000.2020 of this Part, or that is an emergency as defined in Section 2000.2030 of this Part, may be made in accordance with procedures

governing those Sections and need not comply with these sole source procedures. A change in the length of the contract that does not exceed 30 days and other minor, immaterial changes to the scope or administrative provisions of a contract shall not be considered changes subject to these sole source procedures.

d) Procurement Officer to Determine
1) The determination as to whether a procurement shall be made as a sole source shall be made by the Procurement Officer. Such determination and the basis therefore shall be in writing. Such officer may specify the application of such determination and the duration of its effectiveness.
2) Any purchase request submitted to the CPO suggesting that a procurement be restricted to one potential vendor shall be accompanied by an explanation as to why no other vendor will be suitable or acceptable to meet the need.

e) Publication of Sole Source Notice
The Procurement Officer shall publish in the Bulletin notice of intent to contract with that vendor at least 14 days prior to execution of the contract.
1) If no challenge to this determination is made by a vendor within the 14 day period, the Procurement Officer may execute a contract with that vendor.
2) If a challenge is received, the Procurement Officer shall consider the information and shall commence a competitive procurement if the Procurement Officer determines that more than one economically feasible source may be available and the sole source designation is, therefore, not appropriate, unless an emergency situation exists.

f) Negotiation in Sole Source Procurement
The Procurement Officer shall conduct negotiations, as appropriate, to reach contract terms, including price, and shall maintain a record of each sole source procurement showing:
1) the vendor's name;
2) the amount and type of the contract;
3) what was procured; and
4) the identification number of the contract file.

Section 2000.2030 Emergency Procurements

a) Applications
The provisions of this Part apply to every procurement over the small purchase limit set in Section 2000.2020 (Small Purchases) of this Part and which is not a sole source procurement under Section 2000.2025 of this Part made under emergency, including quick purchase, conditions.

b) Definition of Emergency Conditions
Procurements may be made under this Section 2000.2030 in the following circumstances:
1) Traditional circumstances include but are not limited to:

A) public health or safety, including the health or safety of any particular person, is threatened;

B) immediate repairs are needed to State property to protect against further loss or damage to State property, or to prevent loss or damage to State property;

C) immediate action is needed to prevent or minimize serious disruption in State services;

D) action is needed to ensure the integrity of State records;

E) equipment or services are necessary in the furtherance of covert activities lawfully conducted by a State agency. Any required disclosures shall be made so as not to jeopardize those covert activities;

F) immediate action is necessary to avoid lapsing or loss of federal or donated funds; or

G) the need for items to protect or further State interests is immediate and use of other competitive source selection procedures under the Code and this Part cannot be accomplished without significant risk of causing serious disadvantage to the State.

2) After Unsuccessful Competitive Sealed Bidding or Proposals or Request for Proposals. When bids or proposals received pursuant to a competitive sealed bid or competitive sealed proposal method are unreasonable or noncompetitive, or the price exceeds available funds, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids or proposals, and if emergency conditions exist after an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may be made.

3) Extension to Allow Competition. Extending an existing contract for such period of time as is needed to conduct a competitive method of source selection where terminating or allowing the contract to terminate would not be advantageous to the State.

4) Quick Purchase.

A) A supplier announces bankruptcy, cessation of business, or loss of franchise, or gives other similar reason so that making a purchase immediately is more advantageous to the State than instituting a competitive procurement under the provisions of the Code for the supplies or services;

B) Items are available on the spot market or at discounted prices for a limited time so that good business judgment mandates a purchase immediately to take advantage of the availability and price;

C) Availability of rare items, such as books of historical value;

D) The procurement is for entertainment.

c) Scope of Emergency Conditions
Emergency procurements shall be limited to the items, quantity and term necessary to meet the emergency need.

d) Authority to Make Emergency Procurements
Authority to make emergency procurements is established in Subpart C. Whenever practical, existing State contracts shall be utilized and, whenever practical, approval by the SPO shall be obtained prior to the procurement. The CPO or SPO shall be responsible for making the filings required in Section 20-30 of the Code.

e) Source Selection Methods
Any method of source selection, whether or not identified in this Part, may be used to conduct the procurement in emergency situations. The procedure used shall be selected to assure that the required items are procured in time to meet the emergency. Such competition as is practicable shall be obtained.

f) Determination and Record of Emergency Procurement

1) Determination. The Procurement Officer shall make a written determination stating the basis for an emergency procurement and for the selection of the particular vendor. Such determinations shall be kept in the contract file of the Procurement Officer.

2) Record. An affidavit of each emergency procurement shall be filed with the CPO and the Auditor General within 10 days after the procurement and shall include the following information:

A) the vendor's name;

B) the amount and type of the contract, provided that, if only an estimate of the amount is available immediately, the record shall be supplemented with the final amount once known;

C) a description of what the vendor will do or provide;

D) the reasons for using the emergency method of source selection.

3) Notice of the emergency procurement shall be published in the Bulletin in accordance with Subpart D of this Part.

Section 2000.2035 Competitive Selection Procedures for Professional and Artistic Services

a) Application

1) The provisions of this Section apply to every procurement of professional and artistic services except those subject to the Architectural, Engineering and Land Surveying Qualifications Based Selection Act [30 ILCS 535] and except as provided in Section 2000.2035(e).

2) *"Professional and artistic services" means those services provided under contract to a State agency by a person or business, acting as an independent contractor, qualified by education, experience, and technical ability* [30 ILCS 500/1-15.60].

b) Professional and artistic services are further defined as follows:

1) "Qualified by education" means the individual who would perform the services must have obtained the level of education specified

in the Request for Proposals.

2) "Qualified by experience" means the individual who would perform the services must have the level of general experience specified in the Request for Proposals.

3) "Qualified by technical ability" means the individual who would perform the services must demonstrate a high degree of skill or ability in performing services that are the same, similar or closely related in nature to those specified in the Request for Proposals.

4) An essential element distinguishing professional and artistic services from other services is confidence, trust, and belief in not only the ability, but the talent, of the individual performing the service. These services are primarily for intellectual or creative skills. Contracts for services primarily involving manual skills or labor are not professional and artistic services contracts. (See Illinois Attorney General Opinion S-256, January 20, 1971.)

5) If the professional or artistic contract is with a firm or other business entity, the individuals whose education, experience and technical ability provided the basis on which the firm or other business entity was selected must meet the qualifications.

6) When SOS requires services that meet the requirements of this subsection (b), the competitive selection procedures described in this Section must be followed. Services that do not meet the requirements of this Section must be procured in accordance with other methods of source selection authorized by the Code and this Part.

c) The categories of services enumerated below shall be considered and procured as professional and artistic services. With regard to other services, the SPO may determine whether the factors identified in subsection (b), when applied to particular services to be procured, require such services to be procured as professional and artistic under these competitive selection procedures, or as services that are subject to one of the other methods of source selection authorized by the Code and this Part. The following categories are examples of disciplines that would always be professional and artistic services:

1) law;
2) accounting;
3) medicine;
4) dentistry; and
5) clinical psychology.

d) Architect, engineering and land surveying services shall be procured pursuant to the procedures of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act [30 ILCS 535]. Such procurements are not subject to the procedures for other professional services established in the Code or this Part.

e) Conditions for Use of Competitive Selection Procedures
Except as authorized under Section 20-25 (Sole Source Procurement) or

Section 20-30 (Emergency Procurements) of the Code, these competitive selection procedures shall be used for all procurements of professional and artistic services of $20,000 or more. Services of less than $20,000 and for a nonrenewable term of one year or less may be procured in accordance with Section 2000.2020 (Small Purchases) of this Part.

f) Prequalification. The CPO shall maintain a list of prequalified professional and artistic vendors in accordance with Section 2000.2045 of this Part. Persons may amend statements of qualifications at any time by filing a new statement. Failure of a professional and artistic vendor to prequalify shall not be cause for rejection of a proposal provided that the responsive offeror supplies with its proposal all information defined by the prequalification process.

g) Public Notice of Competitive Selection Procedures

1) Notice of the need for professional and artistic services shall be made by the Procurement Officer in the form of a Request for Proposals.

2) Notice shall be given as provided in Section 2000.2010 (Competitive Sealed Bidding) of this Part.

3) Notice shall also be distributed to prequalified persons interested in performing the services required by the proposed contract.

h) Request for Proposals

1) Contents. The Request for Proposals shall be in the form specified by the CPO and shall contain at least the following information:

A) the type of services required;
B) a description of the work involved;
C) an estimate of when and for how long the services will be required;
D) the type of contract to be used;
E) a date by which proposals for the performance of the services shall be submitted;
F) a statement of the minimum information that the proposal shall contain, which may, by way of example, include:

i) the name of the offeror, the location of the offeror's principal place of business and, if different, the place of performance of the proposed contract;

ii) if deemed relevant by the Procurement Officer, the age of the offeror's business and average number of employees over a previous period of time, as specified in the Request for Proposals;

iii) the abilities, qualifications, and experience of all persons who would be assigned to provide the required services;

iv) a listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a

previous period of time, as specified in the Request for Proposals;

v) a plan, giving as much detail as is practical, explaining how the services will be performed;

G) price (to be submitted in a separate envelope in the proposal package and not mentioned elsewhere in the proposal package); and

H) the factors to be used in the evaluation and selection process and their relative importance.

2) Evaluation. Proposals shall be evaluated only on the basis of evaluation factors stated in the Request for Proposals. Price will not be evaluated until ranking of all proposals and identification of the most qualified vendor. The relative importance of the evaluation factors will vary according to the type of services being procured. The minimum factors are:

A) the plan for performing the required services;

B) ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services;

C) the personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; and

D) a record of past performance of similar work.

i) Pre-Proposal Conference

A pre-proposal conference, if appropriate, shall be conducted in accordance with Section 2000.2010(f) (Pre-Bid Conference). Such a conference may be held anytime prior to the date established for submission of proposals.

j) Delivery, Receipt and Handling of Proposals

1) Proposals shall be submitted to and opened by the SPO in accordance with instructions given by the SPO.

2) Public Opening

A) Proposals and modifications shall be opened publicly at the time, date and place designated in the Request for Proposals.

B) Opening shall be witnessed by a State employee or by any other person present, but the person opening proposals shall not serve as witness. A record shall be prepared that shall include the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the supply or service item offered. The record of proposals shall be open to public inspection after award of the contract.

C) Proposals and modifications shall be opened in a manner designed to avoid disclosing contents to competitors. Only State personnel and contractual agents may review the

proposals prior to award.

D) Proposals of offerors who are not awarded the contract shall not be open to public inspection.

k) Discussions

1) Discussions Permissible. The Procurement Officer may conduct discussions with any offeror to:

A) determine in greater detail such offeror's qualifications; and

B) explore with the offeror the scope and nature of the required services, the offeror's proposed method of performance, and the relative utility of alternative methods of approach. The Procurement Officer may allow changes to the proposal based on those discussions.

2) No Disclosure of Information. Discussions shall not disclose any information derived from proposals submitted by other offerors, and the agency conducting the procurement shall not disclose any information contained in any proposals until after award of the proposed contract has been made. The proposal of the offeror awarded the contract shall be open to public inspection except as otherwise provided in the contract.

l) Selection of the Best Qualified Offerors

After conclusion of validation of qualifications, evaluation, and discussion, the Procurement Officer shall rank the acceptable offerors in the order of their respective qualifications.

m) Evaluation of Pricing Data

Pricing submitted for all proposals timely submitted shall be opened and ranked.

1) If the low price is submitted by the most qualified vendor, the Procurement Officer may award to that vendor.

2) If the price of the most qualified vendor is not low and if it does not exceed $25,000, the Procurement Officer, but not a designee, may award to that vendor.

3) If the price of the best qualified vendor exceeds $25,000, the Procurement Officer, but not a designee, must state why a vendor other than the low priced vendor was selected and that determination shall be published in the Bulletin.

n) Negotiation and Award of Contract

1) General. The Procurement Officer shall attempt to negotiate a contract with the best qualified offeror for the required services at fair and reasonable compensation. The Procurement Officer may, in the interest of efficiency, negotiate with other vendors, while negotiating with the best qualified vendor.

2) Elements of Negotiation. At a minimum, contract negotiations shall be directed toward:

A) making certain that the offeror has a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;

B) determining that the offeror will make available the

necessary personnel and facilities to perform the services within the required time; and

C) agreeing upon compensation that is fair and reasonable, taking into account the estimated value of the required services and the scope, complexity, and nature of such services.

3) Successful Negotiation of Contract with Best Qualified Offeror

A) If compensation, contract requirements, and contract documents can be agreed upon with the best qualified offeror, the contract shall be awarded to that offeror, unless the procurement is canceled.

B) Compensation must be determined in writing to be fair and reasonable. Fair and reasonable compensation shall be determined by the Procurement Officer based on the circumstances of the particular procurement, including but not limited to the nature of the services needed, qualifications of the offerors, consideration of range of prices received in the course of the procurement, and the agency's identified budget.

4) Failure to Negotiate Contract with Best Qualified Offeror

A) If compensation, contract requirements, or contract documents cannot be agreed upon with the best qualified offeror, a written record stating the reasons therefore shall be placed in the file. The Procurement Officer shall advise such offeror of the termination of negotiations.

B) Upon failure to negotiate a contract with the best qualified offeror, the Procurement Officer may enter into negotiations with the next most qualified offeror.

C) Nothing in this Section shall prohibit the Procurement Officer from making a selection that represents the best value, qualifications, price and other relevant factors established in the request for proposals being considered. The Procurement Officer may, in considering best value, determine the proposal from a fully qualified vendor that submitted the lowest price to be the best value without further evaluation.

o) Notice of Award

Written notice of award shall be public information and made a part of the contract file. The SPO shall publish the names of the responsible decision makers of the purchasing agency, the name of the agency, the successful vendor, a contract reference number or other identifier, and the value of the contract. Publication shall be in the next available issue of the Bulletin.

p) Small, sole source and emergency procurements of professional and artistic services under the jurisdiction of an SPO do not require approval of the CPO to proceed. Any notices shall be published by the SPO.

q) Post Performance Review

The SPO shall require the using department to provide a synopsis of the contract and shall rate the vendor's performance using the form developed by the SPO. A copy of the completed form shall be provided to the SPO.

Section 2000.2036 Other Methods of Source Selection

a) Split Award

1) An award of a definite quantity requirement may be split between bidders or offerors. Each portion shall be for a definite quantity and the sum of the portions shall be the total definite quantity required. A split award may be used only when award to more than one bidder or offeror for different amounts of the same item are necessary to obtain the total quantity or the required delivery.

2) The Procurement Officer shall make a written determination setting forth the reasons for the split award, which determination shall be made a part of the procurement file.

b) Multiple Award

1) A multiple award is an award of an indefinite quantity contract to more than one bidder or offeror when the State is obligated to order all of its actual requirements from those vendors.

2) A multiple award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Any multiple award shall be made in accordance with the provisions of Section 2000.2010 (Competitive Sealed Bidding), Section 2000.2015 (Competitive Sealed Proposals), Section 2000.2020 (Small Purchases), and Section 2000.2030 (Emergency Procurements), as applicable. Awards shall not be made for the purpose of simply dividing the business or to select products or suppliers to allow for user preference unrelated to utility or economy. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements of the State.

3) The State shall reserve the right to take bids separately if a particular quantity requirement arises that exceeds its normal requirement or an amount specified in the contract.

4) If a multiple award is anticipated, the solicitation shall state this fact as well as the criteria for award.

5) In a multiple award situation, one vendor may be designated as the primary recipient of orders. The other awardees may receive orders in the event the primary vendor is unable to deliver or for other reasons as determined by the Procurement Officer.

c) Term and Condition Contracts

1) A term and condition contract contains agreed contractual terms and conditions established for the convenience of the parties to be used in conjunction with a subsequent procurement

and processed in accordance with the requirements of the Code and this Part. A term and condition contract is not a procurement. It creates no obligation on the part of the State to procure from the vendor, except as provided in subsection (c)(2).

2) Orders may be placed against term and condition contracts without use of any prescribed method of source selection for convenience of processing sole source, emergency or small procurements.

d) Auction
Purchases may be made at auction in accordance with the procedural requirements applicable to the particular auction. Notice and competition is not required and the amount payable shall be the amount bid and accepted plus any required buyer's premium.

e) Non-governmental Joint Purchase

1) The SPO may enter into an agreement with a person not eligible for the Governmental Joint Purchasing Act for the joint procurement of anything covered by the Code. Any method of source selection may be used and may be modified or adapted to meet the needs of the non-State entity.

2) The primary use of this provision shall be to accommodate mutual relationships between the State and not-for-profit groups whose purpose is to conduct programs adjunct to those of the State agency that is party to the contract.

f) Federal Requirements
The Procurement Officer may conduct procurements in accordance with federal requirements that are necessary to receive or maintain those federal aid funds, grants or loans or to remain in compliance with federal requirements.

g) Donations
When a procurement will have the majority of funding from a donation, the terms of which donation require use of particular procurement or contracting procedures, the Procurement Officer may follow those procedures, but shall follow the Code and this Part whenever practicable.

Section 2000.2037 Tie Bids and Proposals

a) Tie bids or proposals are those from responsive and responsible vendors that are identical in price or evaluation and represent the low price.

b) Tie bids or proposals will be treated as follows:

1) If the tied vendors include an Illinois resident vendor, the Illinois resident vendor shall be given the award. In all other situations, including if two or more Illinois resident bidders are tied, the decision shall be made in accordance with this subsection (b). "Illinois resident vendor" has the meaning given in Section 2000.4510 (Resident Bidder Preference) of this Part.

2) If there is a significant difference in responsibility (including ability to provide the service or deliver in the quantity and at the time required), the award will be made to the vendor who is deemed to be the most responsible. A vendor who has had experience in contracting with the State shall be given additional consideration in determining responsibility if the Procurement Officer determines that dealing with a vendor that has knowledge of State requirements, contracts, job sites, payment practices and such other factors and with which there has been favorable past experience increases the likelihood of successful performance.

3) If there is no significant difference in responsibility, but there is a difference in the quality of the supplies or services offered, the vendor offering the best quality will be accepted.

4) If there is no significant difference in responsibility and no difference in quality of the supplies or services offered, the vendor offering the earliest delivery time will be accepted in any case in which the solicitation specified that the needs of the State require delivery as early as possible.

5) If the bids or proposals are equal in every respect, the award shall be made by lot unless the Procurement Officer determines that splitting the award among two or more of the tied bidders is in the best interest of the State. Awards may be split if all affected bidders agree, if splitting is feasible given the type of supplies or services requested, if overall pricing would not increase, if delivery would be better ensured, or if necessary or desirable to promote future competition.

c) Record
Records shall be maintained of all procurements on which tie bids or proposals were received. The record shall provide at least the following information:

1) the identification number of the solicitation;

2) a description of what was procured; and

3) a listing of all the bidders and the prices submitted.

Section 2000.2038 Mistakes

a) General
Corrections to bids, proposals or other procurement processes are allowed, but only to the extent not contrary to the best interest of the State or the fair treatment of other bidders.

b) Mistakes Discovered Before Opening
A vendor may correct mistakes discovered before the time and date set for opening by withdrawing or correcting as provided in this Section.

c) Confirmation of Mistake
When the Procurement Officer knows or has reason to conclude that a mistake has been made, such officer shall request the vendor to confirm the information. Situations in which confirmation should

be requested include obvious or apparent errors on the face of the document or a price unreasonably lower than the others submitted. If the vendor alleges a mistake, the bid or proposal may be corrected or withdrawn if the conditions set forth in this Section, as applicable, are met.

d) Mistakes in Bids Discovered After Opening but Before Award
This subsection (d) sets forth procedures to be applied in situations in which mistakes in bids are discovered after the time and date set for bid opening but before award.

1) Minor informalities. A minor informality or irregularity is one that is a matter of form or pertains to some immaterial or inconsequential defect or variation of a bid from the exact requirement of the Invitation for Bids, the correction or waiver of which would not be prejudicial to the State (i.e., the effect on price, quality, quantity, delivery, or contractual conditions is negligible). The Procurement Officer shall waive such informalities or allow the bidder to correct them depending on which is in the best interest of the State. Examples of minor informalities as to form include the failure of a bidder to:

A) return the number of signed bids required by the Invitation for Bids;

B) sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound, including but not limited to signature on an auxiliary form, submission of a bid guarantee or submission of a signed transmittal letter; or

C) acknowledge receipt of an amendment to the Invitation for Bids, but only if:

i) it is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or

ii) the amendment involved had a negligible effect on price, quantity, quality, or delivery.

2) Mistakes Where Intended Correct Bid Is Evident. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

3) Mistakes Where Intended Correct Bid Is Not Evident. A bidder may be permitted to withdraw a low bid if:

A) a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or

B) the bidder submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made.

e) Mistakes in Proposals Discovered After Receipt, but Before Award
This subsection (e) sets forth procedures to be applied in four situations in which mistakes in proposals are discovered after receipt

of proposals but before award.

1) During Discussions; Prior to Best and Final Offers. Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct any mistake prior to the date set for conclusion of discussions or for receipt of best and final offers.

2) Minor Informalities. Minor informalities, unless otherwise corrected by an offeror as provided in this Section, shall be treated as they are under subsection (d).

3) Correction of Mistakes. If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the intended correct offer considered only if:

A) the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn; or

B) the mistake is not clearly evident on the face of the proposal, but the offeror submits adequate proof that clearly and convincingly demonstrates both the existence of a mistake and the intended correct offer, and such correction would not be contrary to the fair and equal treatment of other offerors.

4) Withdrawal of Proposals. If discussions are not held, or if the best and final offers upon which award will be made have been received, the offeror may be permitted to withdraw the proposal if:

A) the mistake is clearly evident on the face of the proposal and the intended correct offer is not;

B) the offeror submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made but does not demonstrate the intended correct offer; or

C) the offeror submits adequate proof that clearly and convincingly demonstrates the intended correct offer, but to allow corrections would be contrary to the fair and equal treatment of other offerors.

f) Mistakes Discovered After Award
Mistakes shall not be corrected after award of the contract except where the Procurement Officer finds it would be unconscionable (e.g., if the mistake resulted in a windfall to the State) not to allow the mistake to be corrected.

g) Determinations Required
When a proposal is corrected or withdrawn, or correction or withdrawal is denied, a written determination shall be prepared showing that relief was granted or denied in accordance with this Part. The Procurement Officer shall prepare the determination.

Section 2000.2040 Cancellation of Solicitations; Rejection of Bids or Proposals

a) Scope of this Section
The provisions of this Section shall govern the cancellation of any solicitations whether issued by the State under competitive sealed bidding, competitive sealed proposals, small purchases, or any other source selection method, and rejection of bids or proposals in whole or in part.

b) Policy
Any solicitation may be canceled when the Procurement Officer believes cancellation to be in the State's best interest. Nothing shall compel the award of a contract.

c) Cancellation of Solicitation; Rejection of All Bids or Proposals Prior to Opening
1) As used in this Section, "opening" means the date set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals.
2) Prior to opening, a solicitation may be canceled in whole or in part when the Procurement Officer determines in writing that such action is in the State's best interest for reasons including, but not limited to:
A) the State no longer requires the supplies or services;
B) the State no longer can reasonably expect to fund the procurement; or
C) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.
3) When a solicitation is canceled prior to opening, notice of cancellation shall be sent to all businesses that responded to the solicitation.
4) The notice of cancellation shall:
A) identify the solicitation;
B) briefly explain the reason for cancellation; and
C) where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar supplies or services

d) Cancellation of Solicitation; Rejection of All Bids or Proposals After Opening
1) After opening but prior to award, all bids or proposals may be rejected in whole or in part when the Procurement Officer determines in writing that such action is in the State's best interest. Such reasons may include, but are not limited to:
A) the supplies or services being procured are no longer required;
B) ambiguous or otherwise inadequate specifications were part of the solicitation;
C) the solicitation did not provide for consideration of all factors of significance to the State;
D) prices exceed available funds and it would not be appropriate to adjust quantities to come within available

funds;
E) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
F) there is reason to question whether the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.
2) When the solicitation is canceled or when all bids or proposals are rejected, all vendors who submitted bids or proposals shall be sent a notice upon request informing them of the reasons for the cancellation or rejection.

e) Documentation
The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

f) Rejection of Individual Bids or Proposals
1) General. This subsection (f) applies to rejections of individual bids or proposals in whole or in part.
2) Notice in Solicitation. Each solicitation shall provide that any bid or proposal may be rejected in whole or in part when in the best interest of the State as provided in this Section.
3) Reasons for Rejection
Reasons for rejecting a bid or proposal may include, but are not limited to:
A) the business that submitted the bid or proposal is nonresponsible as determined under Section 2000.2046 (Responsibility) of this Part;
B) the bid or proposal is not responsive, that is, it does not conform in all material respects to the solicitation;
C) the proposal ultimately (that is, after any opportunity has passed for altering or clarifying the proposal) fails to meet the announced requirements of the State in some material respect;
D) the supply or service item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the Invitation for Bids; or
E) the proposed price is clearly unreasonable.
4) Notice of Rejection Upon request, unsuccessful bidders or offerors shall be advised of the reasons for rejection.

SUBPART F: SUPPLIERS, PREQUALIFICATION AND RESPONSIBILITY

Section 2000.2043 Suppliers

a) The Procurement Officer may contract with any qualified source of supply, but must procure from the Directed Sources except as permitted by those sources, and must consider the following Special Sources.

b) Directed Sources -- State-Produced Supplies or Services
   1) Correctional Industries. The CPO, after consulting with the Department of Corrections, shall determine the type and extent of the preference given to supplies produced or services performed by Correctional Industries. Factors to be considered in determining the preference include, but are not limited to, the ability of Correctional Industries to meet the State's requirements, the price charged and the reason for the Correctional Industries program.
   2) Central Services. Supplies and services available from the program operations of the Department of Central Management Services shall be utilized whenever possible.
c) Special Sources
   1) Prior to any equipment procurement, the SOS may consider property available from the State and Federal Surplus Warehouses, which are under the jurisdiction of the Department of Central Management Services. The State Property Control Act [30 ILCS 605/7a] requires that surplus furniture be considered before any purchase of new furniture valued at $500 or more per piece.
   2) Various supplies and services are available from qualified workshops for the disabled and procurement from these workshops is encouraged. Notice and competition is not required pursuant to Section 45-35 of the Code. Information regarding the workshops is available from DCMS.
   3) Various supplies and services are available from State agencies and other governmental units. These may be procured without notice and competition.

Section 2000.2044 Vendor List/Required Use

a) The CPO may maintain a list of vendors interested in doing business with the State. The names and addresses of vendors on the list shall be available for public inspection.
b) Inclusion on, or exclusion from, the list shall not be a factor in determining whether a vendor is a responsible vendor.
c) When vendors are directly solicited by the State, Invitations for Bids and other solicitations will be sent to vendors on the vendor list for supplies or services in question, except in the following cases:
   1) The vendor does not sell the particular commodity or equipment.
   2) The number of vendors for a procurement classification is of such magnitude that optimum prices may reasonably be expected without soliciting the entire vendor list. The Procurement Officer may, if he/she determines that the best interest of the State would be served, rotate the selection from the list on any equitable basis.
   3) The Procurement Officer determines that the best interests of the State will be served by limiting vendors to those in defined geographic areas (example: purchases of ready-mix concrete,

perishables, and equipment requiring immediate service).
d) The CPO may alternately refer to vendor lists maintained by DCMS.

Section 2000.2045 Prequalification

a) General
   1) The CPO shall identify by publication in the Bulletin the categories of supplies and services (including professional and artistic services) for which the CPO may prequalify vendors of those supplies and services. The CPO is not required to prequalify vendors but may do so when determination of a vendor's qualifications prior to procurement would be advantageous to the State.
   2) The SPO may require that vendors be prequalified as a condition of being placed on the bid list. An opportunity to prequalify shall be allowed at least one time each fiscal year. The opportunity to prequalify and whether prequalification will be a condition of bidding or being awarded a contract shall be announced in the Bulletin. The notice shall alert vendors that failure to participate in the prequalification process may result in the vendor being ineligible to receive contracts.
   3) When prequalifying a vendor, the CPO may limit prequalifications to determining whether a vendor has been and is likely to be "responsible" using the criteria set forth in Section 2000.2046 of this Part. The fact that a prospective vendor has been prequalified does not necessarily represent a finding of responsibility for a particular procurement.
   4) When prequalifying a vendor, the CPO may consider factors tailored to a specific procurement or type of procurement that shall be announced in the Bulletin.
   5) Except in the case of professional and artistic services, distribution of and responses to the solicitation may be limited to prequalified vendors and award of a contract may be denied because a vendor was not prequalified. If eligibility for the procurement will be limited to prequalified vendors, the Invitation for Bids, Request for Proposals or other procurement request shall state that fact.
b) Professional and Artistic Services
   1) Any prequalification of vendors of professional and artistic services shall include, at a minimum, a specified level of:
      A) education;
      B) experience; and
      C) technical ability;
      and may require certification or licensure, or membership in professional associations.
   2) Categories for prequalification will include, but are not limited to, those listed in Section 2000.2035 of this Part.
c) Qualified Products Lists

Qualified products lists are treated in Section 2000.2050 (Specifications and Samples) of this Part.

Section 2000.2046 Responsibility

a) Application
Contracts are to be made only with responsible vendors unless no responsible vendor is available to meet the State's needs. If there is doubt about responsibility, and if a bond or other security would adequately protect the State's interests, then that vendor may be awarded a contract upon receipt of the bond or other security.

b) Standards of Responsibility
1) Standards. Factors to be considered in determining whether the standard of responsibility has been met may include, but are not limited to, whether:
A) has available the appropriate financial, material, equipment, facility, and personnel resources and expertise (or the ability to obtain them) necessary to indicate its capability to meet all contractual requirements (the Procurement Officer may designate a level of financial resource below which the vendor will be deemed "not responsible");
B) is able to comply with required or proposed delivery or performance schedules, taking into consideration all existing commercial and governmental commitments;
C) has a satisfactory record of performance. Vendors who are or have been deficient in current or recent contract performance in dealing with the State or other customers may be deemed "not responsible" unless the deficiency is shown to have been beyond the reasonable control of the vendor;
D) has a satisfactory record of integrity and business ethics. Vendors who are under investigation or indictment for criminal or civil actions that bear on the particular procurement or that create a reasonable inference or appearance of a lack of integrity on the part of the vendor may be declared not responsible for the particular procurement;
E) is qualified legally to contract with the State;
F) has supplied all necessary information in connection with the inquiry concerning responsibility;
G) has a current Public Contracts number from the Illinois Department of Human Rights, pursuant to 44 Ill. Adm. Code 750.210, if required. Proof of application prior to opening of bids or proposals will be sufficient for an initial determination;
H) pays prevailing wages, if required by law; and
I) is current in payment of all State of Illinois taxes, including the unemployment insurance tax.

2) Information Pertaining to Responsibility. The prospective vendor shall supply information requested by the Procurement Officer concerning the responsibility of such vendor. The State may supplement this information from other sources and may require additional documentation at any time. If such vendor fails to supply the requested information, the Procurement Officer shall base the determination of responsibility upon any available information, or may find the prospective vendor nonresponsible.

c) Ability to Meet Standards
The prospective vendor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:
1) evidence that such vendor possesses such necessary items;
2) acceptable plans to subcontract for such necessary items; or
3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

d) Duty Concerning Responsibility
Before awarding a contract, the Procurement Officer must be satisfied that the prospective vendor is responsible. Responsibility can be proven until time of contract execution unless the solicitation or other law requires that the vendor submit information necessary to determine responsibility by a stated date or time.

e) Written Determination of Nonresponsibility Required
If a vendor who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the Procurement Officer. The final determination shall be made part of the procurement file.

f) Bond for Responsibility
Vendors not having a history of performance may be considered responsible if no other disqualifying factors exist. A bond or other security may be required of such vendors.

g) Affiliated Companies
Vendors who are newly formed business concerns having substantially the same owners, officers, directors, or beneficiaries as a previously existing vendor that has been determined not responsible will also be determined not to be responsible unless the new organization can prove it was not set up for the purpose of avoiding an earlier determination of nonresponsibility.

SUBPART G: BID, PROPOSAL AND PERFORMANCE SECURITY

Section 2000.2047 Security Requirements

a) A Procurement Officer may require that a vendor furnish bid, proposal, or performance security on State contracts. Whenever security is required, except as provided herein, the procurement document will clearly indicate the type and amount of security.

b) Security, unless otherwise specified, may be in the form of cashier's check, certified check, money order, irrevocable letter of credit or bond. Any bond must be issued by a surety company authorized to do business in the State of Illinois.

c) Unless the amount is set by law, the Procurement Officer will determine the amount, in dollars or percentage of contract price, that will adequately protect the State's interests. That amount will vary depending on the type of procurement and the risks and potential losses associated with delay or failure to complete the project, and for other such reasons.

d) A vendor may be required to furnish up to 100% performance security at any time during contract performance and at its cost, if it appears that delivery or production schedules cannot be met, quality is poor, responsibility is questioned and for similar reasons.

e) Permissive/Mandatory Security
   1) Bid or proposal security is permissive on any contract but is not appropriate on emergency or sole source procurements.
   2) Performance security is permissive on any contract and is recommended on contracts calling for advance payment.
   3) Performance security is required on all public works contracts.

f) A vendor may submit a single or continuous security each year that will be applicable on all SOS contracts. When such security has been obligated in an amount equal to the sum of accumulated security requirements, additional security must be submitted.

g) Bid or proposal security will be returned to unsuccessful vendors as soon after award as possible. The bid or proposal security of the successful vendor will be returned after contracts have been signed and performance security, if any, submitted. Performance security will be returned upon full performance.

SUBPART H: SPECIFICATIONS AND SAMPLES

Section 2000.2050 Specifications and Samples

a) Responsibilities Regarding Specifications
   1) The Procurement Officer shall write the necessary specifications except as noted in this subsection (a).
   2) If a specification for general or common use or a qualified products list exists for an item to be procured under Section 20-20 of the Code (Small Purchases), it shall be used except as otherwise authorized by the SPO. If no such specification exists, the Procurement Officer shall have the authority to prepare specifications for use in such purchases. In an emergency under Section 20-30 of the Code, any necessary specification may be utilized without regard to the provisions of this Subpart.

b) Procedures for the Development of Specifications
   1) If the SPO develops a specification for a common or general use item or has developed a qualified products list in accordance with this Section for a particular supply or service, it shall be used unless the SPO authorizes use of another specification.
   2) All procurements shall be based on specifications that accurately reflect the State's needs. Specifications shall clearly and precisely describe the salient technical or performance requirements.
   3) Specifications shall not include restrictions that do not significantly affect the technical requirements or performance requirements, or other legitimate State needs. All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply or service, or procurement from a sole source, unless no other manner of description will suffice.
   4) Any specifications or standards adopted by business, industry, not-for-profit organization or governmental unit may be adopted by reference.
   5) A specification may provide alternate descriptions where two or more design, functional, or performance criteria will satisfactorily meet the State's requirements.

c) Brand Name or Equal Specification
   1) Brand name or equal specifications may be used when the Procurement Officer determines in writing that:
      A) no specification for a common or general use specification or qualified products list is available;
      B) time does not permit the preparation of another form of specification, not including a brand name specification;
      C) the nature of the product or the nature of the State's requirement makes use of a brand name or equal specification suitable for the procurement; or
      D) use of a brand name or equal specification is in the State's best interest.
   2) Brand name or equal specifications shall seek to designate more than one brand as "or equal", and shall further state that substantially equivalent products to those designated will be considered for award.
   3) Unless the Procurement Officer determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics that are required.
   4) Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. "Or equal" submissions will not be rejected because of minor differences in

design, construction or features that do not affect the suitability of the product for its intended use. Burden of proof that the product is equal is on the bidder.

d) Brand Name Only Specification

1) Determination. A brand name only specification may be used only when the Procurement Officer makes a written determination that only the identified brand name item or items will satisfy the State's needs.

2) Use. Brand name alone may be specified in order to ensure compatibility in existing systems, to preserve warranty, to ensure maintenance, or as authorized in writing by the SPO. The Procurement Officer may, pursuant to an authorized competitive procedure, select a particular vendor to provide supplies or services for a specified period of time, and for that period the supplier of additional, related and updated supplies and services may be limited to the selected vendor or the brand initially selected.

3) Competition. The Procurement Officer shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 2000.2025 (Sole Economically Feasible Source Procurement) of this Part.

4) Small and Emergency Procurements. Brand name only specifications may be used when procuring items under the small (Section 2000.2020) and emergency (Section 2000.2025) provisions of this Part.

e) Qualified Products List

1) Use. A qualified products list may be developed by the Procurement Officer when testing or examination of the supplies prior to issuance of the solicitation is desirable or necessary in order to best satisfy State requirements.

2) Solicitation. When developing a qualified products list, a representative group of potential suppliers shall be solicited in writing to submit products for testing and examination to determine acceptability for inclusion in a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration during the time allowed for testing and examination.

3) Testing and Confidential Data. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with established requirements. Except as otherwise provided by law, trade secrets, test data, and similar information provided by the supplier will be kept confidential when requested in writing by the supplier.

f) Proven Products

The supply or service may be rejected if it has not been offered to

other governmental or commercial accounts for at least one year. Specifications may require that the supply or services must have been used in business or industry for a specified period of time to be considered.

g) State Required Samples

1) Any required samples must be submitted as instructed in the solicitation with transportation prepaid by the vendor. Each sample must be labeled with the vendor's name, address and a means of matching the sample with the applicable bid or proposal.

2) Any sample submitted must be representative of the item that would be delivered if a contract were awarded for that item. Samples submitted by a successful vendor will be retained to check continuing quality. Submission of samples will not limit the State's right to require adherence to specifications.

3) No payment will be made for State Required Samples. Samples not destroyed or consumed by examination or testing will be returned upon request and at vendor's expense. Such request must be made at time of submission with return collect or prepayment provisions and instructions for return accompanying the samples.

h) Product Demonstration

Any vendor may request time and space to demonstrate a product or service. Agreement to allow such demonstration will be solely at the State's discretion and will not entitle the bidder to a contract nor shall payment for the demonstration be allowed unless a written contract had been executed prior to the demonstration.

i) Specifications Prepared by Other Than State Personnel

1) Specifications may be prepared by other than State personnel, including, but not limited to, consultants, architects, engineers, designers, and other drafters of specifications for public contracts when the Procurement Officer determines that there will be no substantial conflict of interest involved and it is otherwise in the best interest of the State, and provided the Procurement Officer retains the authority to finally approve the specifications. Contracts for the preparation of specifications by other than State personnel shall require the specification writer to adhere to State requirements.

2) The person who prepared the specifications shall not submit a bid or proposal to meet the procurement need unless the Secretary of State, and not a designee, determines in writing that it would be in the best interest to accept such a bid or proposal from that person. A notice to that effect shall be published in the Bulletin.

SUBPART I: CONTRACT TYPE

Section 2000.2055 Types of Contracts

a) Scope

This Section contains descriptions of types of contracts and limitations as to when they should be utilized by the State in its procurements. Types of contracts not mentioned in this Section may also be utilized.

b) Prohibition of Cost-Plus-a-Percentage-of-Cost Contracting
The cost-plus-a-percentage-of-cost contract is prohibited by Section 20-55 of the Illinois Procurement Code. This type of contracting may not be used alone or in conjunction with an authorized type of contract. A cost-plus-percentage-of-cost contract is one in which the vendor selects the supply or service on which the vendor's percentage is applied.
  1) A percentage mark-up from an agreed price list is not a cost-plus-a-percentage-of-cost contract.
  2) A percentage mark-up from the price of a supply or service selected by the State or another vendor under contract to the State is not a cost-plus-a-percentage-of-cost contract.

c) Types of Fixed-Price Contracts
  1) Firm Fixed-Price Contract. A firm fixed-priced contract provides a price that is not subject to adjustment because of variations in the vendor's cost of performing the work specified in the contract.
  2) Fixed-Price Contract with Price Adjustment
    A) A fixed-price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in the vendor's price can be made shall be specified in the solicitation and the resulting contract. Adjustment allowed may be upward or downward only, or both upward and downward. Examples of conditions under which adjustments may be provided in fixed-price contracts are:
      i) changes in the vendor's labor agreement rates as applied to an industry or area (such as are frequently found in contracts for the purchase of coal);
      ii) changes due to rapid and substantial price fluctuations that can be related to an accepted index (such as contracts for gasoline, heating oils, and dental gold alloy); and
      iii) in requirement contracts, where a vendor is selected to provide all of the State's needs for the items specified in the contract, when a general price change applicable to all customers occurs, or when a general price change alters the base price (such as a change in a manufacturer's published price list or posted price to which a fixed discount is applied pursuant to the contract to determine the contract price).
    B) If the contract permits unilateral action by the vendor to

bring about the condition under which a price increase may occur, the State shall have the right to reject the price increase and terminate without cost the future performance of the contract.

d) Cost-Reimbursement Contracts
  1) Determination Prior to Use
    A) A cost-reimbursement type contract may be used only when the Procurement Officer determines in writing that such a contract is likely to be less costly to the State than any other type or that it is impracticable to obtain the items.
    B) Reimbursement of travel expenses in accordance with applicable travel control board regulations is authorized without further determinations.
  2) Cost Contract. A cost contract provides that the vendor will be reimbursed for allowable costs incurred in performing the contract, but will not receive a fee.
  3) Cost-Plus-Fixed-Fee Contract. This is a cost-reimbursement type contract that provides for payment to the vendor of an agreed fixed fee in addition to reimbursement of allowable incurred costs. The fee is established at the time of contract award and does not vary if the actual cost of contract performance is greater or less than the initial estimated cost established for such work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee is subject to adjustment only if the contract is modified to provide for an increase or decrease in the scope of work specified in the contract.
  4) Cost Incentive Contracts
    A) General. A cost-incentive type of contract provides for the reimbursement to the vendor of allowable costs incurred up to the ceiling amount and establishes a formula whereby the vendor is rewarded for performing at less than target cost (that is, the parties' agreed best estimate of the cost of performing the contract will vary inversely with the actual, allowable costs of performance and consequently is dependent on how effectively the vendor controls cost in the performance of the contract).
    B) Fixed-Price Cost-Incentive Contract. In a fixed-price cost-incentive contract, the parties establish at the outset a target cost, a target profit (that is, the profit that will be paid if the actual cost of performance equals the target cost), a formula that provides a percentage increase or decrease of the target profit depending on whether the actual cost of performance is less than or exceeds the target cost, and a ceiling price. After performance of the contract, the actual cost of performance is arrived at based on the total incurred allowable costs as provided in the contract. The final contract price is then established in

accordance with the formula using the actual cost of performance. The final contract price may not exceed the ceiling price. The vendor is obligated to complete performance of the contract, and, if actual costs exceed the ceiling price, the vendor suffers a loss.

C) Cost-Reimbursement Contract with Cost-Incentive Fee. In a cost-reimbursement contract with cost-incentive fee, the parties establish at the outset a target cost; a target fee; a formula for increase or decrease of fee depending on whether actual cost of performance is less than or exceeds the target cost, with maximum and minimum fee limitations; and a cost ceiling that represents the maximum amount that the State is obligated to reimburse the vendor. The vendor continues performance until the work is complete or costs reach the ceiling specified in the contract, including any modification thereof, whichever first occurs. After performance is complete or costs reach the ceiling, the total incurred, allowable costs reimbursed as provided in the contract are applied to the formula to establish the incentive fee payable to the vendor.

e) Performance Incentive Contracts
In a performance incentive contract, the parties establish at the outset a pricing basis for the contract, performance goals, and a formula that varies the profit or the fee if the specified performance goals are exceeded or not met. For example, early completion may entitle the vendor to a bonus, while late completion may entitle the State to a price decrease.

f) Time and Materials Contracts; Labor Hour Contracts
Time and materials contracts provide an agreed basis for payment for materials supplied and labor performed. Labor hour contracts provide only for the payment of labor performed. Such contracts shall, to the extent possible, contain a stated ceiling or an estimate that shall not be exceeded without prior State approval.

g) Definite Quantity and Indefinite Quantity Contracts
1) Definite Quantity. A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of supplies or services either at specified times or when ordered.
2) Indefinite Quantity. An indefinite quantity contract is a contract for an indefinite amount of supplies or services to be furnished at specified times, or as ordered, that establishes unit prices of a fixed-price type. Generally an approximate quantity or the best information available as to quantity is stated in the solicitation. The contract may provide a minimum quantity the State is obligated to order and may also provide for a maximum quantity provision that limits the State's obligation to order.
3) Requirements Contracts. A requirements contract is an indefinite quantity contract for supplies or services that specifically

obligates the State to order all the actual requirements of designated State agencies during a specified period of time.

h) Leases
A lease is a contract for the use of supplies or real property under which title will not pass to the State at any time, except pursuant to an option to purchase.

i) Recovery Contracts
Contracts may provide for payment to the vendor of a percentage of the amount the vendor recovers or collects on behalf of the State. The percentage may be fixed or may vary depending on amount of recovery or other factors, and the percentage may be paired with a fixed price or cost reimbursement method.

j) Option Provisions
1) Contract Provision. When a contract is to contain an option for renewal, extension, or purchase, notice of such provision shall be included in the solicitation. These options may be exercised without taking other procurement action when the option is established for exercise at the State's option.
2) Lease with Purchase Option. A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding or competitive sealed proposals, the leased supply or facility is the only supply or facility that can meet the State's requirements, the purchase option price is less than the small purchase limit or emergency conditions exist.

k) State Produced Supplies and Services
Notwithstanding any provision in any contract, supplies or services available from the State's own programs, such as Correctional Industries, may be ordered without violating any contract.

l) Extraordinary Quantities
Notwithstanding any provision in any contract, the State reserves the right to take bids separately if a particular quantity requirement arises that exceeds the State's normal needs or ordering requirements.

m) Energy Conservation
The CPO may authorize an IFB, RFP or sole source negotiation for energy conservation measures whereby the State would make payment based on utility cost savings. Such contract shall require a clearly defined baseline of energy usage and method of measuring cost savings taking into account at least differing weather conditions, changes in facility usage and cost of energy.

n) Sale of Advertising in State Publications
1) Pursuant to Section 20-110 of the Code, a Procurement Officer may sell ads or advertising space in publications issued by the Secretary of State.
2) These arrangements shall be made pursuant to specifications included in an IFB or, if appropriate, an RFP.
3) The advertising in, or authorized use of, State publications shall be appropriate to the type of publication and the program

operations of the agency.

4) This procedure is authorized in conjunction with, for example, publications that promote literacy, organ donation, senior services and the State Library. The Secretary of State and not a designee must concur in writing to accept advertising from a person the agency regulates.

5) Proceeds from the sale of the advertisements shall be paid as stated in the IFB or RFP, including, but not limited to, the following:

A) to the General Revenue Fund;

B) to a special fund authorized to receive the proceeds;

C) as free or additional copies; or

D) directly to the printer by the advertiser.

SUBPART J: DURATION OF CONTRACTS

Section 2000.2060 Duration of Contracts - General

a) General

1) A multi-term contract for a term of up to 10 years is authorized when determined by the Procurement Officer to be in the best interest of the State.

2) A software license may have a term longer than 10 years, including for a perpetual term, provided the payment term is limited to no more than 10 years.

b) The contractual obligation of both parties in each fiscal period succeeding the first is subject to appropriation and availability of funds. The contract shall provide that, in the event that funds are not available for any succeeding fiscal period, the remainder of such contract shall be canceled without penalty to, or further payment being required by, the State. This provision applies to only those contracts that are funded in whole or in part by funds appropriated by the Illinois General Assembly or other governmental entity.

c) Conditions for Use of Multi-Term Contracts
A multi-term contract may be used when:

1) special production of definite quantities or the furnishing of long-term services is required to meet State needs; or

2) a multi-term contract will serve the best interests of the State by encouraging effective competition or otherwise promoting economies in State procurement. The following factors are among those relevant to such a determination:

A) firms that are not willing or able to compete because of high start-up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping such costs during the period of contract performance;

B) lower production costs because of larger quantity of service requirements, and substantial continuity of production or

performance over a longer period of time, can be expected to result in lower unit prices;

C) stabilization of the vendor's work force over a longer period of time may promote economy and consistent quality; or

D) the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.

d) Multi-Term Contract Procedure
The solicitation shall state:

1) the proposed term;

2) the amount of supplies or services required for the proposed contract period;

3) the type of pricing requested (e.g., firm for term);

4) how award will be determined.

e) Renewals

1) When the original procurement specifically called for an initial term plus renewals, the renewals may be exercised without further procurement activity, provided the initial term and the exercised renewals may not exceed 10 years, the terms and conditions do not change except as provided in the contract (such as price escalations tied to an index) and the option is reserved solely to the State or is by mutual agreement. A renewal option that requires modification to a material term or condition of the contract shall be treated as a new contract and shall be subject to competitive procurement procedures established by the Code and this Part.

2) When the original procurement was silent as to renewals, the renewal must be procured using one of the methods of source selection authorized by the Code and this Part. This renewal shall start a new term not to exceed 10 years.

3) When a renewal will result in the total term, counting the initial term and any previous renewals, to exceed 10 years, the renewal must be procured using one of the methods of source selection authorized by the Code and this Part. This renewal will start a new term that shall not exceed 10 years.

SUBPART K: CONTRACT MATTERS

Section 2000.2560 Prevailing Wage

a) For the following classifications and if competition exists, no bidder will be awarded a contract unless its employees are paid wages and benefits and are working under conditions prevalent in the location where the work is to be performed.

1) Public works

2) Printing

3) Janitorial services, window washing and security guard services having a monthly contract price of at least $200 or a yearly

price of at least $2,000.

b) Prevailing wage and conditions prevalent means the hourly wage rate, overtime, holiday pay, pension, welfare, premium differential, vacation pay and other benefits received by employees and the environmental conditions under which they work.

c) Prevailing Wage Rates

1) Prevailing wage rates, benefits and conditions will be those in effect on the first date of the contract, provided that, if the rate changes during the contract term and the amount of change is known before execution of the contract, then the contract rate will vary in like amount.

2) If the change in the collective bargaining agreement cannot be determined in advance, the contract will be changed by the amount of the change in wage rate and all components of price that are dependent on the usage rate, such as payroll taxes, worker's compensation insurance, vacation, sick days, and pension, provided that profit shall not increase due to prevailing wage increases. The SPO shall have the option to cancel the contract if the new price is unacceptable.

3) If the initial prevailing wage, etc., cannot be determined prior to execution, contracts may be entered into and will remain valid for the stated term.

d) If a collective bargaining agreement is in effect governing the type of printing, janitorial, window washing or security guard service sought, that agreement will define minimum wages, benefits and conditions that must be paid in order for a bidder to be considered responsible.

e) For public works, location means the county where the physical work upon public works is performed, except that if there is not available in the county a sufficient number of competent skilled laborers, workers and mechanics to construct the public works efficiently and properly, "locality" includes any other county nearest the one in which the work or construction is to be performed and from which such persons may be obtained in sufficient numbers to perform the work.

f) Printing Contracts

1) For printing contracts, location means one of the following areas:

A) Cook County;

B) Boone, Bureau, Carroll, Champaign, DeKalb, DeWitt, DuPage, Ford, Fulton, Grundy, Hancock, Henderson, Henry, Iroquois, Jo Daviess, Kane, Kankakee, Kendall, Knox, Lake, LaSalle, Lee, Livingston, Logan, Marshall, Mason, McDonough, McHenry, McLean, Mercer, Ogle, Peoria, Piatt, Putnam, Rock Island, Schuyler, Stark, Stephenson, Tazewell, Vermilion, Warren, Whiteside, Will, Winnebago, and Woodford counties;

C) Adams, Alexander, Bond, Brown, Calhoun, Cass, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Franklin, Gallatin,

Greene, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Macon, Macoupin, Madison, Marion, Massac, Menard, Monroe, Montgomery, Morgan, Moultrie, Perry, Pike, Pope, Pulaski, Randolph, Richland, Saline, Sangamon, Scott, Shelby, St. Clair, Union, Wabash, Washington, Wayne, White, and Williamson counties.

2) Where the printing is performed in a plant outside the jurisdiction of this State, it shall be deemed produced in the Illinois locality in which delivery of the printing ordered is required to be made. Where such printing is required to be delivered to more than one Illinois locality, such printing shall be deemed produced in the Illinois locality to which the largest dollar volume of printing under the contract is to be delivered.

g) For janitorial services, window washing and security guard services, location means the county in which the work is to be performed.

h) Prevailing wages, benefits and conditions will be determined by the Illinois Department of Labor.

Section 2000.2570 Equal Employment Opportunity; Affirmative Action

a) Public Contracts. Every party to a public contract and every eligible bidder shall:

1) Refrain from unlawful discrimination and discrimination based on citizenship status in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination;

2) Comply with the procedures and requirements of the Department of Human Right's (DHR) regulations concerning equal employment opportunities and affirmative action;

3) Provide such information, with respect to its employees and applicants for employment, and assistance as DHR may reasonably request;

4) Have written sexual harassment policies that shall include, at a minimum, the following information:

A) the illegality of sexual harassment;

B) the definition of sexual harassment under State law;

C) a description of sexual harassment, utilizing examples;

D) the vendor's internal complaint process, including penalties;

E) the legal recourse, investigative and complaint process available through DHR and the Human Rights Commission;

F) directions on how to contact DHR and the Commission; and

G) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act (IHRA) [775 ILCS 5].

A copy of the policies shall be provided to the Department of Human Rights upon request.

b) Section 7-105A of the IHRA authorizes the Department of Human Rights to promulgate policies, rules and regulations to implement the

SECRETARY OF STATE

NOTICE OF ADOPTED RULES

provisions of the IHRA applicable to eligible bidders and public contractors. DHR has promulgated rules, 44 Ill. Adm. Code 750, that establish public contractor and eligible bidder duties, obligations, and reporting requirements. Those rules require that certain employers register with DHR in order to be eligible for the award of certain public contracts (44 Ill. Adm. Code 750.Appendix A).

SUBPART L: CONTRACT PRICING

Section 2000.2800 All Costs Included

The IFB or RFP and any resulting contract should define whether prices cover transportation, transit insurance, delivery, installation, taxes, and any other costs.

SUBPART M: CONSTRUCTION AND CONSTRUCTION RELATED PROFESSIONAL SERVICES

Section 2000.3005 Construction and Construction Related Professional Services

Construction and construction-related services are procured by the CPO in accordance with the Secretary of State Act [15 ILCS 305/5] under rules promulgated by the SOS (71 Ill. Adm. Code 2000).

SUBPART N: REAL PROPERTY LEASES AND CAPITAL IMPROVEMENT LEASES

Section 2000.4000 Applicability

Except as otherwise authorized by law, real property leases and capital improvement leases are subject to, and shall be procured by, the Office of the Secretary of State in accordance with the Code and this Part.

Section 2000.4005 Requests for Space/Department Responsibilities

a) Departments shall indicate their space needs by submitting a written request to the CPO on the forms required by the CPO.
b) Departments shall give early notice of new or changing space requirements. Each Department shall provide information as may be required in advance of projected needs with six months being the preferred notice.
c) Each department head shall certify the need for space required, the number of personnel to occupy the premises and the availability of funds on each Space Request.

Section 2000.4010 General Acquisition Procedures

a) SOS will review State-owned space leased by other agencies that may be suitable to fill the department space request. Such space, because it involves no outside expenditure or because use would avoid unnecessary lease costs, will be used in preference to newly acquired leased space. Exceptions will only be granted upon strong justification submitted by the Director of the department requesting space.

SECRETARY OF STATE

NOTICE OF ADOPTED RULES

b) Acquisition of space by lease will be on the basis most favorable to the State, with due consideration to maintenance and operation efficiency. In those instances where alterations to a property are needed, CPO will review and approve the scope of work and method of payment prior to the commencement of work. Departments are not to perform alterations to leased properties or enter into contracts for alterations without CPO approval. Factors that could influence the decision to approve alteration include but are not limited to: length of term, cost relative to base cost, cost of base plus alterations compared to other site costs, degree of permanency of alterations, and demonstrated program need for alterations.
c) The CPO will determine the appropriate term for a given lease (not to exceed 10 years unless paid solely by federal funds) and negotiate accordingly. The particular terms and conditions of a given lease will in general conform to the SOS standard lease form provisions. Changes, additions or deletions to these terms shall be at CPO's discretion.
d) The CPO will attempt to negotiate a favorable renewal option, State-option cancellation clause, and purchase option provision when appropriate.
e) All leases shall be accompanied by a full written disclosure of the identity of every owner and beneficiary having any interest in the premises being leased.
    1) Such disclosure shall be subscribed and sworn or otherwise affirmed on oath by an owner, authorized trustee, corporate official, or managing agent.
    2) Such disclosure shall set forth all ownership interests. By way of example, the disclosure should identify the names of the beneficiaries of a land trust in addition to the trustee, the names of all partners whether general or limited in nature, and names of all shareholders in a corporation who are entitled to receive more than 7 1/2% of the total distributable income of the corporation. If stock in a corporation is publicly traded and no readily known individual owns more than a 7 1/2% interest, then the requirements of this Part may be met by an officer or managing agent of the corporation making an affirmative statement to this effect under oath.
    3) Such disclosure shall set forth the identify of any State officer, employee or elected official, or the wife, husband, or minor child of such person having an ownership or beneficial interest under the lease. In the event such person is so set forth, the disclosure shall include a specific designation of the percentage of the total distributable income such person, together with that of the wife, husband, or minor child of such

person, is entitled to receive from any firm, partnership, association, or corporation that is the lessor.

4) It shall be the responsibility of the lessor to notify the CPO of any change in ownership of beneficial interest and to submit updated disclosure statements reflecting such changes within 30 days after such change.

f) All leases shall be in writing and shall include:
   1) a provision that the lease is subject to termination and cancellation in any year for which the General Assembly fails to make an appropriation to make payments under the terms of the lease.
   2) a termination option in favor of the State.

g) Space that is not in compliance with the applicable accessibility standards or is not capable of being brought in compliance with the installation of minimum essential features of accessibility by the time of occupancy shall not be considered for use.

h) A copy of all leases whose annual rent is $10,000 or more shall be filed with the Comptroller within 15 days after their execution by the CPO.

i) In selecting sites, preference may be given to sites located in enterprise zones, TIF districts, or redevelopment districts when requested by the Chief Executive Officer of a unit of local government located within the boundaries of the site search area.

Section 2000.4015 Acquisition of Leases by RFI

All leases, except those falling under the exceptions listed in Section 2000.4020 or emergency procurements (Section 2000.4045) will be acquired as follows:

a) All leases will be procured by a Request for Information (RFI). RFIs will contain at a minimum the following information:
   1) A description of the general type of property to be leased.
   2) The proposed use of the property.
   3) The proposed term of the lease.
   4) Preferred location of the property.
   5) General information such as size of space, configuration desired and any other appropriate requirements.
   6) Address to which requests for proposal may be sent.
   7) Date on which responses are due.

b) Notice of the RFI shall be:
   1) published at least 14 days prior to the deadline for responding in both the Illinois Procurement Bulletin and a newspaper having general circulation in the area in which space is being sought.
   2) Of an appropriate size to draw attention and shall be placed in the legal advertisement section.

c) A proposal package shall be mailed to all parties requesting one in writing. Proposal packages may also be mailed to owners of property that may meet the State's needs.

d) Proposal packages shall at a minimum include:
   1) A Proposal Form.
   2) A copy of the Agency Program Requirements.
   3) An envelope for submitting the proposal.
   4) The date on which proposals must be submitted.

e) All responses to the RFI will be publicly opened on the announced opening date. Names of all parties submitting proposals will be made available to the public.

f) Secretary of State representatives may conduct discussions with respondents to further clarify the needs of the State or obtain further information on responses.

g) On the basis of the responses to the RFI, the CPO or designee shall make a written determination of which RFIs submitted are responsive to the State's basic criteria.

h) Secretary of State representatives will enter into negotiations with all parties submitting responsive RFIs for the purpose of obtaining the best terms for the State. A written record of all negotiations will be maintained by the Secretary of State.

i) The Secretary of State representative shall review all relevant information and shall recommend to the CPO which proposal should be accepted.

j) The CPO will make the final award, which will be announced in the Illinois Procurement Bulletin.

k) The lease will be reduced to writing and executed by all parties.

l) Should the lowest priced proposal not be selected, the CPO shall publish notice, along with the reasons for such selection, in the next available edition of the Procurement Bulletin.

m) The State reserves the right to reject any and all proposals and to request and evaluate "best and final" proposals. All decisions on compliance, evaluations, terms and conditions shall be made solely at the State's discretion and made to favor the State.

Section 2000.4020 Leases Acquired by Other Methods

a) The following types of leases may be acquired without formal RFI process:
   1) Leases of less than 10,000 square feet.
   2) Leases whose base rent is estimated to be less than $100,000 per year.
   3) Leases whose term is less than one year and whose term is not subject to renewal.
   4) Specialized space available only at one location. Specialized space is defined as space of unique function or configuration, not generally available on the market on an as built or turnkey basis. Examples of specialized space include, but are not limited to: laboratories, vehicle testing stations, correctional facilities, medical facilities, boat docks and evidence storage facilities.

5) Leases with other governmental units.

b) Acquisitions of such leases shall be by negotiation. Written summaries of all negotiations shall be maintained in Secretary of State files.

c) Secretary of State is not restricted to negotiating only with those who respond to advertisements. Secretary of State shall remain responsible to consider other buildings or space known to meet general criteria.

d) Recommendation of sites shall be reduced to writing and the final determination shall be made by the CPO. Reasons for selection shall be documented and maintained in Secretary of State lease files.

e) None of the above shall prohibit the CPO from ordering a lease procurement to be made under the RFI provisions of Section 2000.4015 if the CPO deems it in the best interests of the State.

Section 2000.4025 Renewal or Extension of Lease in Effect Prior to July 1, 1998

Leases in effect prior to July 1, 1998 may be renewed or extended without advertisement or an RFI process if:

a) The CPO determines that the renewal or extension is in the best interest of the State.

b) The CPO publishes notice of the renewal or extension in the next available issue of the Procurement Bulletin.

Section 2000.4030 Renewal of Leases Entered into After July 1, 1998

a) Leases may be renewed if:

1) The CPO determines in writing that such renewal is in the best interest of the State.

2) Notice of such renewal is published in the Procurement Bulletin at least 60 days prior to the exercise of such option.

b) Documentation justifying renewals shall be maintained in Secretary of State lease files.

Section 2000.4035 Purchase Options

a) All leases of free standing facilities shall contain an option to purchase exercisable by the State.

b) Purchase options may be omitted if:

1) The lease is with a governmental entity or a not-for-profit entity.

2) The CPO determines that the purchase option is not in the State's best interest and publishes his/her written determination in the Procurement Bulletin.

Section 2000.4040 Lease Administration

a) Officials or employees of the departments for which the CPO will acquire leased space shall at no time, before or after a space request is submitted to the CPO or after a lease agreement is made, directly or indirectly contact lessors, offerors, or potential offerors for the purpose of making oral or written representation or commitments or agreements with respect to the terms of occupancy of particular space, tenant improvements, alteration and repairs, unless authorized by the CPO. Consequently, when it is ascertained by the CPO that an unauthorized contact has been made, lease acquisition action may be deferred until its nature and impact can be determined. Whenever an unauthorized contact is judged by the responsible Secretary of State leasing official to be detrimental to the State's interest, further leasing action may be suspended for such time as may be required to eliminate or minimize the detrimental impact.

b) Lessors, offerors, or potential offerors, or their agents, shall be referred to the appropriate Secretary of State office.

c) Departments shall not negotiate lease terms, negotiate settlements, withhold rentals, or vacate a leased property without the prior approval of the CPO. Departments are encouraged to deal with minor landlord/tenant problems (i.e., minor repairs, building comfort complaints, etc.) at a local level. Any significant difficulties shall immediately be reported to CPO for handling. All problems shall be noted on the local level on the forms provided by the CPO for this purpose and proper records maintained for use in the event a specific problem goes unresolved and further action is required.

d) Each department is responsible for budgeting sufficient money in appropriate line items to cover all obligations. Payments are to be made by the occupying Department and will not be considered the responsibility of the CPO.

e) Except when deemed by the CPO to be in the best interest of the State, no department may incur rental obligations before occupying the space rented.

Section 2000.4045 Emergency Lease Procurement

Emergency lease procurements may be made pursuant to 44 Ill. Adm. Code 2000.2030 of this Part.

SUBPART O: PREFERENCES

Section 2000.4505 Procurement Preferences

The procurement preferences identified in Article 45 of the Code must be considered in developing procurement documents, conducting evaluations and drafting contracts.

Section 2000.4510 Resident Bidder Preference

a) "Illinois resident vendor" as used in this Section means a person authorized to transact business in this State and having a bona fide establishment for transacting business within this State at which it was actually transacting business on the date when any competitive solicitation for a public contract was first advertised or announced, including a foreign corporation duly authorized to transact business in this State that has a bona fide establishment for transacting business within this State at which it was actually transacting business on the date when any competitive solicitation for a public contract was first advertised or announced.

b) In breaking a tie, an Illinois resident vendor shall be given the award.

c) The CPO of DCMS shall maintain a list of states with in-state preference that shall be consulted in all procurements involving out-of-state vendors.

Section 2000.4530 Correctional Industries

a) The SPO shall refer to the listing of the supplies or services available from the Department of Corrections and shall identify those that must be purchased from Corrections.

b) Those items that must be purchased from Corrections may not be procured from any other source without the express written authorization of the SPO.

c) Procurement Officers may procure from Corrections without seeking competition or giving public notice.

Section 2000.4535 Sheltered Workshops for the Disabled

a) Use of Sheltered Workshop
The Procurement Officer may determine to contract with a sheltered workshop on the list maintained by the CPO for DCMS, and may do so without notice or competition.

b) Pricing Approval
While notice and competition is not required prior to contracting with a sheltered workshop, prices must be reasonable. Whether a price is reasonable will be determined based upon current market prices, historical prices, prices received by other State agencies for similar supplies or services, the policy of the Code to promote procurements from sheltered workshops, and other such relevant factors.

Section 2000.4540 Gas Mileage

a) Passenger automobile specifications shall require compliance with minimum gas mileage requirements established in Section 45-40 of the Code. Passenger automobiles must achieve at least the minimum average fuel economy in miles per gallon imposed upon manufacturers of vehicles under Title V of the Motor Vehicle Information and Cost Savings Act (15 USC 2001).

b) Passenger automobiles that do not meet the minimum gas mileage requirements may not be procured unless and until the SPO makes a written determination that a non-compliant automobile is necessary to carry out the function of the agency and the SPO's determination is signed by the Secretary of State.

c) If the Secretary of State confirms need for the non-compliant passenger automobile, that vehicle may be procured. Except in the case of a covert vehicle, notice that a non-compliant passenger automobile is being purchased will be placed in the Bulletin along with the reasons for such a decision.

d) Passenger automobile does not include station wagons, vans, four-wheel drive vehicles, emergency vehicles, or police or fire vehicles.

Section 2000.4545 Small Business

a) Set-Aside
The CPO for DCMS may determine categories of supplies or service procurements that will be set aside for small business located in Illinois. The SPO may contact DCMS to determine whether a particular procurement has been set aside for small business, and, if so, the SOS may honor the set aside to the extent practicable.

b) Small Business List
The SOS may refer to the list of responsible vendors that meet the criteria of small business. A business that fits the definition of small on the day of bid or proposal opening will be considered small for the duration of the contract.

c) Required Use
If a Procurement Officer wishes to make a procurement covered by a set-aside designation, the solicitation must note responses are limited to those from responsible small businesses. Bids or proposals received from large businesses will be rejected as nonresponsive.

d) Withdrawal of Set-Aside
If the Procurement Officer determines that acceptance of the best bid or proposal will result in the payment of an unreasonable price, the Procurement Officer shall reject all bids or proposals and withdraw the designation of small business set-aside for the procurement in question. When a small business set-aside is withdrawn, notification shall be published in the Illinois Procurement Bulletin with an explanation. After withdrawal of the small business set-aside, the procurement shall be conducted in accordance with the limitations of the Code and this Part.

e) Criteria for Small Business
Unless the CPO provides a definition for a particular procurement that reflects industrial characteristics, a small business is one:
1) Independently owned and operated.
2) Not dominant in its field of operations. This means the business does not exercise a controlling or major influence in a kind of

business activity in which a number of business concerns are primarily engaged. In determining dominance, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

3) With annual sales for most recently ended fiscal year no greater than:
   A) $7,500,000 for wholesale business;
   B) $3,000,000 for construction business; or
   C) $1,500,000 for retail business.
4) With no more than 250 employees if a manufacturing business.
   A) A manufacturing business shall calculate how many people it employs by determining its average full-time equivalent employment, based on the number of persons employed on a full-time, part-time, temporary or other basis, for its most recently ended fiscal year.
   B) If a manufacturing business has been in existence for less than a full fiscal year, its average employment should be calculated for the period through one month prior to the bid or proposal due date.
5) If the business is any combination of retailer, wholesaler, or construction business, then the annual sales for each component may not exceed the amounts shown in subsection (e)(3). For example, a business that is both a retailer and a wholesaler may not have total sales exceeding $9,000,000, and the retail component may not exceed $1,500,000 and the wholesale component may not exceed $7,500,000. If the business is also a manufacturer, in addition to meeting the annual sales requirement, the number of manufacturing employees may not exceed the number shown in subsection (e)(4).
6) When computing the size status of a vendor, the number of employees and annual sales and receipts, as applicable, of the vendor and all affiliates shall be included. Concerns are affiliates when either one directly or indirectly controls or has the power to control the other, or when a third party or parties controls or has the power to control both. In determining whether concerns are independently owned and operated and whether affiliation exists, consideration shall be given to all appropriate factors, including use of common facilities, common ownership and management and contractual arrangements. However, a franchise relationship shall not affect small business status if the franchise has the right to profit commensurate with ownership and bears the risk of loss or failure.

Section 2000.4570 Contracting with Businesses Owned and Controlled by Minorities, Females and Persons with Disabilities

a) Introduction
The Business Enterprise Act for Minorities, Females, and Persons with Disabilities [30 ILCS 575] (Act) sets a goal (minimum 12%) for contracting with businesses owned or controlled by minorities, females, or persons with disabilities.

b) Goal
The CPO shall establish a goal that at least 12% of the dollar value of State contracts be awarded to minority and female-owned businesses. Of that 12%, five shall be for female-owned businesses, two for businesses owned by persons with disabilities and not-for-profit agencies for the disabled, and the remaining five for other minority-owned businesses, unless these percentages are modified by the Council created under the Act.

c) Upon direction of the CPO, and pursuant to direction from the Council, the SOS may establish set-asides and other such preferences for vendors certified under that Act.

d) Certification
Certification procedures are set forth in rules governing the Business Enterprise Act (44 Ill. Adm. Code 10).

e) List of Certified Businesses
   1) The CPO for DCMS shall maintain a list of businesses that have been certified.
   2) The names and addresses of certified vendors shall be made available to the public.

f) Professional and Artistic Contract Reporting
Professional and artistic contracts, which must be reported to the Business Enterprise Council pursuant to Section 6a of the Business Enterprise Act, shall be reported as follows:
   1) Notice that an agency intends to enter into a professional and artistic contract shall be given to the Council. Notice may be mailed, hand delivered or given by fax, and must be submitted on the same date that the potential vendor is contacted. If the contract is advertised in the Bulletin, reporting to the Council is not required.
   2) The notice shall include the agency name and address; contact person; contract reference number; date bid or proposal was first available; return dates and opening dates; term of the contract; services to be provided; special requirements; and dollar value. Notice should be given on the form available from the CPO for DCMS.

SUBPART P: ETHICS

Section 2000.5013 Conflicts of Interest

a) An individual has a direct pecuniary interest in a contract when the individual is owed a payment or otherwise receives a direct financial benefit in conjunction with performance of a contract, including

finders fees and commission payments.

b) Distributable income means the income of a company after payment of all expenses, including employee salary and bonus, and retained earnings, which is distributed to those entitled to receive a share of such income. In the case of a for-profit corporation, distributable income means "dividends". When calculating entitlement to distributable income, the entitlement shall be determined at the end of the company's most recent fiscal year.

c) This Section does not apply to contracts with licensed professionals provided such contracts are competitively bid. For purposes of this Section, "bid" means procured pursuant to the competitive procedures identified in Subpart E of this Part.

Section 2000.5015 Negotiations for Future Employment

a) *It is unlawful for any person employed in or on a continual contractual relationship with any of the offices or agencies of State government to participate in contract negotiations on behalf of that office or agency with any firm, partnership, association, or corporation with whom that person has a contract for future employment or is negotiating concerning possible future employment.* [30 ILCS 500/50-15(a)]

b) An individual who performs services pursuant to a contract and who meets the requirements of an "employee" as opposed to an independent contractor is in a "continued contractual relationship" from the effective date of the contract until such time as the contract is terminated.

c) An individual who performs services pursuant to a contract and who meets the requirements of an "independent contractor" as opposed to an "employee" is in a "continued contractual relationship" if the contract term is indefinite, is automatically renewed, is renewable at the individual's option, is renewable unless the State must act to terminate, or has a definite term of at least three months.

Section 2000.5020 Exemptions

If the Procurement Officer finds a conflict of interest under Section 50-13 of the Code with the vendor selected for award or contract negotiations, the Procurement Officer shall forward to the CPO the name of the vendor and a description of the proposed contract and of the potential conflict, and shall state why an exemption should be granted. The CPO may exempt named individuals from the prohibitions of Section 50-13 of the Code when, *in its judgment, the public interest in having the individual in the service of the State outweighs the public policy evidenced in that Section.* [30 ILCS 500/50-20]

Section 2000.5030 Revolving Door

Effective January 15, 1999, the CPO and SPOs shall identify in writing their

designees whose job, or whose position description, is at least 51% directly related to State procurement. The following activities are directly related to State procurement: drafting specifications, preparing Invitations for Bids and Requests for Proposals, evaluating responses to Invitations for Bids and Requests for Proposals, negotiating contracts and supervising any of the foregoing. They shall maintain their designation for a period of at least two years following the end or revocation of the designation.

Section 2000.5035 Disclosure of Financial Interests and Potential Conflicts of Interest

a) For purposes of Section 50-35(a) of the Code, an "offer from responsive bidders or offerors" means only those offers that are received using an Invitation for Bids or Request for Proposals under Section 20-10, 20-15, or 20-35, or Article 35, of the Code. Disclosures are not required in small, sole source or emergency procurements.

b) For purposes of:
   1) Section 50-35(b) of the Code, "parent entity" means a person who owns 100% of the bidding entity.
   2) Section 50-35(b)(1) of the Code, "contractual employment of services" means any contract to provide services to the State, whether as independent contractor or employee, which is by and between the State and the named individual.

c) Distributable or distributive income means the income of a company after expenses, including employee salaries and bonuses, and retained earnings, which is distributed to those entitled to receive a share of such income.

d) Personal services shall be any contract for services subject to this Code, including, by way of example, professional and artistic services, repair services, cleaning and guard services, but excludes contracts with employees who are exempt from the Code under Section 1-10(b)(4).

e) "Competitively bid" means a contract let pursuant to Sections 20-10, 20-15 and 20-35 of the Code.

f) "Subject to federal 10K reporting" means subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934. "10K disclosure" means a report required under Section 13 or 15(d) of the Securities Exchange Act of 1934.

g) Once a disclosure is made in relation to a particular contract, the disclosure need not be repeated if the contract is amended.

h) 10K Disclosures
   1) Any vendor subject to federal 10K reporting requirements may submit its 10K to the State in satisfaction of the disclosure requirement of Section 50-35(b) of the Code provided the vendor also identifies the specific sections or parts in the 10K disclosure where the State may find information, if any, pertaining to those who have an ownership interest or an interest

in the distributable income of the vendor or its parent, or other information that the vendor knows or reasonably should know identifies a potential conflict of interest with the State. If the financial interest or conflict of interest information requested by the State is not in the 10K, but is in a document referenced in the 10K, or in a document that may be submitted to the SEC in conjunction with or in lieu of the 10K, then that additional documentation shall be provided as well.

2) 10K disclosures are available for public review. Any potential conflict of interest identified by the public and brought to the attention of the CPO or SPO shall be investigated.

3) In circumstances where a vendor may submit a 10K disclosure in lieu of the specific disclosure requirements of the Code and for purposes of the Procurement Officer's duty to consider any conflict or potential conflict of interest that may exist, but that is not subject to specific disclosure requirements of the Code and this Part, and that is not personally known by the Procurement Officer, "publicly known or reasonably available to the public" shall consist of information identified by the vendor in the 10K disclosure and any information disclosed pursuant to public review of the 10K disclosure.

SUBPART Q: CONCESSIONS

Section 2000.5310 Concessions

a) A concession is an authorization allowing use of State property fo the purpose of making profit, including future profit.

b) An authorization to allow use of State property by not-for-profit entities is not a concession or lease of State property under Article 53 of the Code.

c) Proposed concessions, leases or other uses of State property must be coordinated with the State Property Control Act [30 ILCS 605] and rules implementing that Act.

SUBPART R: COMPLAINTS, PROTESTS AND REMEDIES

Section 2000.5510 Complaints Against Vendors

a) The purpose of this Section is to document performance of vendors.

b) Whenever a vendor fails to meet contract requirements, including but not limited to failure to deliver on time or meet specifications, the SOS shall take appropriate action to initiate a complaint to the vendor.

c) For relatively minor infractions, the SOS may initiate contact by telephone or in person. If not resolved by this action, a written complaint shall be made.

d) For other infractions, the SOS shall send a written complaint to the

vendor detailing the problem. For complaints regarding contracts established by the CPO for DCMS, a form available from the CPO for DCMS shall be used for processing complaints.

e) A copy of all written complaints and the resolution or status shall be filed with the SPO.

Section 2000.5520 Suspension

a) Application
This Section applies to all debarments or suspensions of vendors from consideration for award of contracts under the Code.

b) The CPO may suspend a vendor from doing business with the SOS, with one or more agencies, or with respect to specific types of supplies or services. A suspension may be issued upon a showing the vendor violated the Code or this Part, or failed to conform to specifications or terms of delivery.

c) When the CPO finds cause exists for suspension, a notice of suspension, including a copy of such determination, shall be sent to the suspended vendor. Bids or proposals will not be solicited from the suspended vendor, and, if received, will not be considered during the period of suspension.

d) A vendor may be suspended for a period of time commensurate with the seriousness of the offense, but for no more than five years. The suspension will be effective seven calendar days after receipt of notice unless an objection is filed. If an objection is filed, suspension would not become effective until the evaluation of the objection is completed.

e) The CPO may debar a vendor. Debarment is the permanent suspension of a vendor from doing business with the SOS. A debarment may only take place in those instances involving bribery or attempted bribery of a State of Illinois officer or employee, or as otherwise allowed or required by law. Bids or proposals received from the debarred vendor will not be considered.

f) The CPO shall maintain a master list of all suspensions and debarments. The master list will retain information concerning suspensions and debarments as public records. Such records will be maintained for a period of at least three years following the end of the suspension or debarment. Such public information may be considered in determining responsibility.

Section 2000.5530 Resolution of Contract Controversies

a) Authority to Resolve Controversies
The Procurement Officer shall have authority to resolve controversies, but the Secretary of State may set limits on such authority.

b) Authority of Using Agency
The Procurement Officers have the authority to accept delivery of supplies or services in accordance with contract requirements as

satisfactory adjustment of a complaint.

c) Substitution of Terms/Price Reduction
If the vendor proposes to make an adjustment by:
1) substituting an alternative specification, or
2) reducing the contract price by a certain amount to compensate for some failure to provide full performance under the contract.
Such proposal must be referred to and approved by the Procurement Officer, but not a designee.

d) Cancellation for Breach of Contract
In any of the following cases the Procurement Officer shall have the right to terminate or rescind any contract entered into under this Part:
1) The successful bidder fails to furnish a satisfactory performance bond within the time specified.
2) The vendor fails to make delivery at the place or within the time specified in the contract or as ordered by the purchasing agency.
3) Any supplies or services provided under the contract are rejected (for not meeting specification, not conforming to sample, or not being in good condition when delivered) and are not promptly replaced by the vendor. If there are repeated rejections of the vendor's supplies or services, this shall be grounds for termination or rescission, even though the vendor offers to replace the supplies or services promptly.
4) The vendor is guilty of misrepresentation (for example, misbranding of food or drugs) in connection with another contract for the sale of supplies or services to the State such that the vendor cannot reasonably be depended upon to fulfill his obligations as a responsible vendor under any of his contracts with the State.
5) The vendor should be adjudged bankrupt; enter into receivership or make a general assignment for the benefit of creditors due to insolvency; disregard laws, rules, or instructions of the Procurement Officer; or act in violation of any provision of the contract; or if the contract conflicts with any statutory or constitutional provision of the State of Illinois or of the United States.
6) Any other breach of contract or other unlawful act by the vendor.

e) Cancellation for Fraud, Collusion, Illegality, Etc.
The SOS may cancel any contract it established if there is sufficient evidence to show that:
1) The contract was obtained by fraud, collusion, conspiracy, or other unlawful means; or
2) The contract conflicts with any statutory provision of the State of Illinois or of the United States.

f) Withholding Money to Compensate State for Damages
If a contract is terminated or rescinded under this Section, the State may deduct from whatever is owed the vendor on that or any other contract an amount sufficient to compensate the State of Illinois for

any damages suffered by it because of the vendor's breach of contract or other unlawful act on the vendor's part on which the cancellation is based.

g) Damages
The damages for which the State may be compensated as provided in this Section or by a suit on the vendor's performance bond or by other legal remedy shall include, but are not limited to, the following:
1) the additional cost of supplies or services bought elsewhere;
2) cost of repeating the procurement procedure;
3) any expenses incurred because of delay in receipt of supplies or services; and
4) any other damages caused by the vendor's breach of contract or unlawful act.

Section 2000.5540 Violation of Statute or Rule

a) Determination that Solicitation or Award Violates Law
If the CPO or the SPO finds that the solicitation or proposed award is in violation of statute or rule, the CPO or the SPO may cancel the solicitation or proposed award, or make modifications to correct the violation, if such correction may be legally accomplished.

b) Determination that Contract Violates the Code or this Part
Contracts based on awards or solicitations that were in violation of law shall be terminated at no cost to the State unless statute or rule allows the State to modify, ratify or take other corrective action.

c) Effect of Declaring a Contract Null and Void
In all cases in which a contract is voided, the State shall endeavor to return those supplies delivered under the contract that have not been used or distributed. No further payments shall be made under the contract.

Section 2000.5550 Protests

a) Protest Resolution by the Procurement Officer
An actual or prospective bidder, offeror, or vendor that may be aggrieved in connection with a procurement may file a protest on any phase of solicitation or award, including but not limited to specifications preparation, bid solicitation, or award.

b) Complaint to Procurement Officer
Complainants should seek resolution of their complaints initially with the SOS. Such complaints may be made verbally or in writing.

c) Filing of Protest
1) Protests shall be made in writing to the Procurement Officer, if applicable, and shall be filed within 7 calendar days after the protester knows or should have known of the facts giving rise to the protest. A protest is considered filed when physically received by the Procurement Officer. Protests filed after the 7 calendar day period shall not be considered. In regard to a

protest regarding specifications, the protest must be received within 7 calendar days after the date the solicitation was issued, and in any event must be received by the State at the designated address before the date for opening of bids or proposals.

2) To expedite handling of protests, the envelope should be labeled "Protest". The written protest shall include as a minimum the following:
   A) the name and address of the protester;
   B) appropriate identification of the procurement and, if a contract has been awarded, its number;
   C) a statement of reasons for the protest; and
   D) supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated.

d) Requested Information; Time for Filing
Any additional information requested by the State shall be submitted within the time periods established by the requesting source in order to expedite consideration of the protest. Failure of the protesting party to comply expeditiously with a request for information by the Procurement Officer may result in resolution of the protest without consideration of that information.

e) Stay of Procurements During Protest
When a protest has been timely filed and before an award has been made, the Procurement Officer shall make no award of the contract until the protest has been resolved. If timely received but after award, the award shall be revoked without penalty and no award made until the protest has been resolved. In either case the Procurement Officer may make the award or reinstate the award upon a determination that the needs of the State require an immediate award and performance under the contract.

f) Decision by the Procurement Officer
A decision on a protest shall be made by the Procurement Officer as expeditiously as possible after receiving all relevant requested information. If a protest is sustained, the available remedies include, but are not limited to, reversal of award and cancellation or revision of the solicitation.

g) Effect of Judicial or Administrative Proceedings
If an action concerning the protest has commenced in court, the Procurement Officer shall not act on the protest, but shall refer the protest to the SOS Chief Legal Counsel. This Section shall not apply when a court requests, expects, or otherwise expresses interest in the decision of the Procurement Officer.

SUBPART S: SUPPLY MANAGEMENT AND DISPOSITIONS

Section 2000.6010 Supply Management and Dispositions

a) Inventory Responsibility
The SOS shall maintain accountability for tangible personal property and other supplies under its control subject to the requirements of the State Property Control Act [30 ILCS 605] and rules implementing that Act.

b) Supply Management
The SOS shall order supplies on a schedule and in quantities so as to maintain no more than a 12 month supply in inventory. Supplies shall be ordered so as to maintain the minimum inventory commensurate with ability to meet agency needs. This 12-month inventory restriction does not apply to lifesaving medications, mechanical spare parts, or when a greater quantity is needed to meet minimum order quantities.

c) Inventory
The SOS shall periodically inventory all warehouses and similar storage areas under their jurisdiction.

d) Report of Inventory
The CPO shall be notified periodically of all supplies in excess of the 12 month restriction on inventory.

SUBPART T: GOVERNMENTAL JOINT PURCHASING

Section 2000.6500 General

In an effort to make the procurement process more efficient, State and other governmental units may agree to utilize each others' procurement contracts. This authority is governed by this Subpart and the Governmental Joint Purchasing Act [30 ILCS 525].

Section 2000.6510 No Agency Relationship

In any joint procurement situation, the governmental unit must issue its own purchase order, accept its own deliveries and make its own payments. The State of Illinois shall have no obligation to the vendor for payment of orders placed by other governmental units.

SUBPART U: MISCELLANEOUS PROVISIONS OF GENERAL APPLICABILITY

Section 2000.7000 Severability

If any provision of this Part or any application thereof is held invalid, such invalidity shall not affect other provisions or applications of this Part that can be given effect without such invalid provision or application.

Section 2000.7010 Government Furnished Property

If the State provides any property to the vendor in furtherance of the contract, such property shall remain the property of the State but may be consumed by the vendor if necessary to complete the contract. Vendor will

issue a receipt for the property and will be responsible for its safekeeping and for return of unused property to the State.

Section 2000.7015 Inspections

a) Inspection of Plant or Site
The State may enter a vendor's or subcontractor's plant or place of business to:
1) inspect supplies or services for acceptance by the State pursuant to the terms of a contract;
2) audit the books and records of any vendor or subcontractor pursuant to Section 2000.7020 (Records and Audits) of this Part;
3) investigate an action to debar or suspend a person from consideration for award of contracts pursuant to the Code;
4) determine whether the standards of responsibility have been met or are capable of being met;
5) determine if the contract is being performed in accordance with its terms; and
6) accomplish any other purpose permitted by law.

b) Inspection and Testing of Supplies and Services
1) Solicitation and Contractual Provisions. State contracts may provide that the State may inspect supplies and services at the vendor's or subcontractor's facility and perform tests to determine whether the supplies or services conform to solicitation requirements, or, after award, to contract requirements, and are therefore acceptable. Such inspections and tests shall be conducted in accordance with the terms of the solicitation and contract.
2) Procedures for Trial Use and Testing. The Procurement Officers may establish operational procedures governing the testing and trial use of equipment, material, and other supplies, and the application of resulting information and data to specifications or procurements.

c) Conduct of Inspections
1) Inspectors. Inspections or tests shall be performed so as not to unduly delay the work of the vendor or subcontractor. No inspector other than the Procurement Officer may change any provision of the specifications or the contract without written authorization of the Procurement Officer. The presence or absence of an inspector shall not relieve the vendor or subcontractor from any requirements of the contract.
2) Location. When an inspection is made in the plant or place of business of a vendor or subcontractor, such vendor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.
3) Time. Inspection or testing of supplies and services performed at the plant or place of business of any vendor or subcontractor shall be performed at reasonable times.

d) Inspection of Construction Projects
On-site inspection of construction shall be performed in accordance with the terms of the contract.

Section 2000.7020 Records and Audits

a) Retention of Books and Records
Books and records that relate to performance of a State contract, including subcontracts, and that support amounts charged to the State, shall be maintained:
1) by a vendor, for three years from the date of final payment under the prime contract;
2) by a subcontractor, for at least three years from the date of final payment under the subcontract; and
3) by a vendor and subcontractor for such longer period of time as is necessary to complete ongoing or announced audits.

b) Contract Audit
1) Types of Contracts Audited. The type of contract under which books and records should be audited is that in which price is based on costs or is subject to adjustment based on costs, or that in which auditing would be appropriate to assure satisfactory performance, such as a time and materials contract.
2) Situations in which an audit may be warranted include but are not limited to when a question arises in connection with:
A) the financial condition, integrity, and reliability of the vendor or subcontractor;
B) any prior audit experience;
C) the adequacy of the vendor's or subcontractor's accounting system;
D) the number or nature of invoices or reimbursement vouchers submitted by the vendor or subcontractor for payment;
E) the use of federal assistance funds;
F) the fluctuation of market prices affecting the contract; or
G) any other situation in which the Procurement Officer finds that such an audit is necessary for the protection of the State's best interest.

Section 2000.7025 Written Determinations

a) Preparation and Execution
When the Code or this Part requires a written determination, the Procurement Officer required to prepare the determination may delegate its preparation, but the responsibility for and the execution of the determination shall not be delegated.

b) Content
Each written determination shall set out sufficient facts, circumstances, and reasoning as will substantiate the specific

SECRETARY OF STATE

NOTICE OF ADOPTED RULES

determination that is made.

c) Obtaining Supporting Information
While an officer is responsible for the execution of the written determination, other State personnel, particularly technical personnel and appropriate personnel, are responsible for furnishing to the person requesting the audit under Section 2000.7020(b), in an accurate and adequate fashion, the information pertinent to the determination. When requested, such information shall be furnished in writing to the person requesting the audit under Section 2000.7020(b) who shall have the authority to decide the final form and content of the determination and to resolve any questions or conflicts arising with respect to the determination.

d) Forms
The SPO is authorized to prescribe methods and operational procedures to be used in preparing written determinations.

e) Retention
Each written determination shall be filed in the solicitation or contract file to which it applies, shall be retained as part of such file for so long as the file is required to be maintained, and, except as otherwise provided by statute or rule, shall be open to public inspection.

Section 2000.7030 No Waiver of Sovereign Immunity

Nothing in this Part shall be deemed to be a waiver of sovereign immunity.

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Prequalification of Contractors and Issuance of Plans and Proposals

2) Code Citation: 44 Ill. Adm. Code 650

3)

Section Numbers:	Adopted Action:
650.20	Amend
650.30	Amend
650.80	Amend
650.110	Amend
650.290	Amend
650.300	Amend
650.310	Amend
650.315	New Section

4) Statutory Authority: Implementing Section 20-45 of the Illinois Procurement Code [30 ILCS 500/20-45] and Section 4-103 of the Illinois Highway Code [605 ILCS 5/4-103] and authorized by Section 4-201.1 of the Illinois Highway Code [605 ILCS 5/4-201.1] and Section 5-25 of the Illinois Procurement Code [30 ILCS 500/5-25]

5) Effective Date of Amendments: November 4, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this amendment contain incorporations by reference? No

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: June 5, 1998, 22 Ill. Reg. 9505

10) Has JCAR issued a Statement of Objections to these rules? No

11) Differences between proposal and final version: Various grammatical corrections were made at JCAR's suggestion.

12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? No changes were necessary.

13) Will this amendment replace an emergency amendment currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Amendments: The Department has amended pertinent

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENTS

Sections of Part 650 to reflect statutory provisions found in the new Illinois Procurement Code (the Code) [30 ILCS 500]. References to the Illinois Purchasing Act, which has been repealed, are replaced with references to the new Code. Additionally, provisions are added to effect the disclosure requirements of Section 50-35 of the new Code.

16) Information and questions regarding this adopted amendment shall be directed to:

Mr. Jon Tweedt, Deputy Chief Counsel
Illinois Department of Transportation
Office of Chief Counsel
2300 South Dirksen Parkway, Room 311
Springfield, Illinois 62764
217/782-3215

The full text of the Adopted Amendments begins on the next page:

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENTS

TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY MANAGEMENT
SUBTITLE B: SUPPLEMENTAL PROCUREMENT RULES
CHAPTER IX: DEPARTMENT OF TRANSPORTATION

PART 650
PREQUALIFICATION OF CONTRACTORS AND
ISSUANCE OF PLANS AND PROPOSALS

SUBPART A: PREQUALIFICATION

Section
650.10 Purpose
650.20 Definitions
650.30 Introduction to Prequalification
650.40 Application Requirements
650.50 Time for Submission
650.60 Public Disclosure of Contractor Information
650.70 Waiver of Prequalification
650.80 Issuance and Effect of Ratings
650.90 Effective Date of Ratings
650.100 Expiration Date of Ratings
650.110 Denial or Revocation of Ratings
650.120 Extension of Ratings
650.130 Revisions to Prequalification Ratings
650.140 Transfer of Prequalification Ratings
650.150 Reconsideration and Appeal
650.160 Financial Rating - General
650.170 Financial Statement
650.180 Balance Sheet Schedules
650.190 Other Factors Considered in Determining Financial Ratings
650.200 Methods of Improving a Financial Rating
650.210 Computation of Financial Rating
650.220 Work Rating - General
650.230 Determination of Work Ratings
650.240 Performance Factor
650.250 Experience Factor (EF)
650.260 Equipment Factor (EqF)
650.270 Capacity to Perform (CP)
650.280 Calculation of Work Ratings

SUBPART B: ISSUANCE OF PLANS AND PROPOSALS

Section
650.290 Advertising for Bids
650.300 Request for Proposal Forms and Plans; Authorization to Bid
650.310 Affidavit of Availability
650.315 Disclosure of Other Procurement Relationships

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENTS

650.320 Analyzing Requests for Authorization to Bid
650.330 Issuance of Authorization to Bid
650.340 Joint Ventures
650.350 Denial of Authorization to Bid

APPENDIX A AVAILABLE WORK CATEGORIES
APPENDIX B REQUEST FOR EXTENSION OF PREQUALIFICATION RATINGS
APPENDIX C FINANCIAL PLEDGE LETTERS
APPENDIX D FINANCIAL VERIFICATION LETTER
APPENDIX E CORPORATE RESOLUTION

AUTHORITY: Implementing Section 20-45 of the Illinois Procurement Code [30 ILCS 500/20-45] and Section 4-103 of the Illinois Highway Code [605 ILCS 5/4-103] and authorized by Section 4-201.1 of the Illinois Highway Code [605 ILCS 5/4-201.1] and Section 5-25 of the Illinois Procurement Code [30 ILCS 500/5-25].

SOURCE: Adopted at 18 Ill. Reg. 9478, effective July 2, 1994; amended at 21 Ill. Reg. 11238, effective July 29, 1997; amended at 22 Ill. Reg. 20393, effective ~~April 1, 1998~~.

SUBPART A: PREQUALIFICATION

Section 650.20 Definitions

~~"Act"---The-Illinois-Purchasing-Act-[30-ILCS-505].~~

"Affidavit of Availability" - A sworn affidavit indicating all work under contract, pending awards, all subcontracts and value of subcontracts.

"Affiliate" - A member of a group of two or more companies related to one another through common ownership.

"Applicant" - Any prospective contractor who has applied for prequalification in compliance with the procedures delineated in this Part.

"Application for Prequalification" - A package of forms titled "Contractor's Statement of Experience and Financial Condition" (Form BC-8) required to be submitted by an applicant in support of its request for a prequalification rating.

"Authorization to Bid" - The permission given to a contractor to submit a bid on a given Department letting item and the permission to have that bid read.

"Available Bidding Capacity" - The applicable available work ratings

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENTS

and the available financial rating.

"Available Financial Rating" - Financial rating as indicated on the Certificate of Eligibility less the total value of all uncompleted work to be done with the applicant's own forces and work subcontracted to others.

"Available Work Rating" - The work rating in a particular category as indicated on the Certificate of Eligibility less all similar uncompleted work to be done with the applicant's own forces (for a listing of available work categories, see ~~Section 650.~~Appendix A of this Part).

"Certificate of Appraiser" - The certification by an appraiser that the appraisal is performed with no direct or indirect interest, financial or otherwise, in the business of the applicant.

"Certificate of Eligibility" - A certificate issued to the applicant by the Department indicating the applicant's financial rating, work ratings and the effective period of prequalification.

"Code" - The Illinois Procurement Code [30 ILCS 500].

"Combined Financial Statement" - The accounting data of affiliated companies combined to form a single economic entity.

"Consolidated Financial Statement" - The accounting data of parent and subsidiary companies combined to form a single economic entity.

"Contract" - The written agreement between the Department and the contractor setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the work, the furnishing of labor and materials, and the basis of payment. The contract consists of the invitation for bids, the proposal, the letter of award, the contract form and contract bond, any specifications and supplemental specifications, any special provisions, any general and detailed plans, and all agreements that are required to complete the construction of the work, including contract time - all of which constitute one instrument.

"Contractor" - The individual, partnership, or corporation contracting with the Department for performance of prescribed work. An applicant which has been issued a Certificate of Eligibility.

"Department" - The Illinois Department of Transportation.

"Department of Human Rights Identification Number" - A number assigned to an applicant who has prequalified with the Department of Human

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENTS

Rights.

"Director" - The Director of the Division of Highways or the Director's designee.

"District Engineer" - The engineer in charge of one of the nine districts of the Department in which the work of a contract is located.

"Engineer of Construction" - The individual responsible for directing the development of the Department's highway construction policies which assure uniform practices, interpretation and applications in Illinois.

"Financial Rating" - The measured ability of an applicant to sustain adequate cash flow for the duration of an awarded contract based on the submitted application for prequalification.

"Financial Statement" - A complete report of the applicant's financial status set forth on a balance sheet displaying the applicant's assets, liabilities and net worth.

"Joint Venture" - Two or three contractors combining their available financial and work ratings for the purpose of bidding a construction project.

"Letter of Subordination" - A signed statement from a stockholder, officer, director, employee, parent, subsidiary or affiliate agreeing not to withdraw a specific amount of money loaned to the applicant during the period of prequalification.

"Net Worth" - Total assets minus total liabilities.

"Official Newspaper" - The one designated as such by the Department of Central Management Services.

"Parent" - A corporation that owns more than half of the stock of another corporation.

"Prequalification" - The rating process established by the Department which requires all prospective bidders to obtain a Certificate of Eligibility prior to being considered for issuance of bidding proposal forms and plans for any contract awarded by the Department, as well as contracts awarded by local agencies requiring approval of award by the Department.

"Prequalification Section" - The section within the Bureau of Construction of the Department responsible for determining financial

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENTS

ratings, work ratings, and the issuance of bidding proposals.

"Request for Proposal Forms and Plans and Request for Authorization to Bid" - A form provided by the Department to assist a contractor in making a formal request for plans and proposal forms, and subsequent authorization to bid on one or all of the proposals requested.

"Responsibility" - The capability in all respects to perform fully the requirements of an awarded contract, and the integrity and reliability that will assure good faith performance.

~~"Service Bulletin" - The public document which is the official publication and invitation issued by the Department for bids on construction projects.~~

"Specialty Items" - Items that are designated in the contract documents that are considered to require specialized construction techniques that are not ordinarily available in contracting organizations qualified to bid.

"Standard Specifications" - A Department publication entitled Standard Specifications for Road and Bridge Construction that sets forth the contract provisions for road and bridge construction.

"Subsidiary" - A corporation having more than half of its stock owned by another corporation.

"Transportation Bulletin" - The public document which is the official publication and invitation issued by the Department for bids on construction projects.

"Unlimited Rating" - A financial rating in excess of $75 million or a work rating in excess of $25 million.

"Working Capital" - Current assets less applied discounts and current liabilities.

"Work Rating" - The dollar value of work of a particular category of construction that an applicant can perform with his/her organization and equipment in one construction season.

(Source: Amended at 22 Ill. Reg. 20393, effective NOV 4 1998)

Section 650.30 Introduction to Prequalification

a) As required by this Part, each bidder shall be prequalified prior to being considered for issuance of an Authorization to Bid on contracts

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENTS

advertised by the Department.

b) Except as otherwise provided in Section 650.70 of this Part, in order to become prequalified, an applicant shall submit an application for prequalification using forms furnished by the Department.

c) Upon receipt of a completed application, the Prequalification Section evaluates the information and calculates a prequalification rating for the applicant.

d) The prequalification rating is a combination of two subratings: the financial rating and the work rating. The policies and procedures used by the Prequalification Section to determine these two subratings are delineated in this Subpart.

e) After the Prequalification Section determines the applicant's prequalification ratings, the applicant is issued a Certificate of Eligibility. This certificate permits the applicant, now a prequalified contractor, to make application for Authorization to Bid on contracts within the contractor's available bidding capacity in accordance with Subpart B of this Part.

f) Pursuant to the Code ~~Act~~, an applicant must also be prequalified or submit evidence of application with the Illinois Department of Human Rights (IDHR) prior to obtaining bidding proposal forms and plans for contracts which are subject to the competitive bidding requirements of the Code ~~Act~~. Information and forms concerning the rules of IDHR may be obtained from:

Illinois Department of Human Rights
Public Contracts Division
100 West Randolph - Suite 10-100
Chicago, Illinois 60601
(312) 793-2431

g) Pursuant to Section 13.05 of the Business Corporation Act of 1983 [805 ILCS 5/13.05], out-of-state contractors are required to secure a certificate from the Illinois Secretary of State authorizing them to do business in Illinois. The certificate must be obtained prior to the execution of a contract. Application forms can be obtained from:

Illinois Secretary of State
Corporation Division
Centennial Building
4th Floor
Springfield, Illinois 62756
(217) 782-1834

(Source: Amended at 22 Ill. Reg. 20393, effective NOV 4 1998)

Section 650.80 Issuance and Effect of Ratings

a) Once the Prequalification Section has completed its analysis of all information relevant to the determination of ratings and has established the ratings of the applicant, a Certificate of Eligibility

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENTS

will be issued to the applicant. A copy of the Certificate of Eligibility will be provided to requesting units of local government.

b) The Certificate of Eligibility permits the prequalified contractor to make application for Authorization to Bid on contracts in accordance with the procedures of Subpart B of this Part. The Certificate of Eligibility may be used by units of local government as evidence of contractor eligibility to bid on contracts advertised and awarded by the units of local government with approval by the Department as required by law.

c) The Certificate of Eligibility and the ratings therein confer neither a license nor a right to bid on or to be awarded a contract. Prequalification is an initial, preliminary determination of responsibility which must be finally determined at the time of award and execution of a contract advertised by the Department or at the time of approval in the case of contracts subject to Department approval by law.

d) Financial Interest Disclosure

1) Section 50-35 of the Illinois Procurement Code [30 ILCS 500/50-35] requires that all bids of more than $10,000 be accompanied by disclosure of the financial interests of the bidder. The financial interests to be disclosed include the ownership or distributive income share that is in excess of 5% or an amount greater than 60% of the annual salary of the Governor, of the bidding entity or its parent entity, whichever is less, unless the contractor or bidder is a publicly traded entity subject to Federal 10K reporting, in which case it may submit its 10K disclosure in place of the prescribed disclosure. The disclosure includes the names, addresses, and dollar or proportionate share of ownership of each person making the disclosure, the instrument of ownership or beneficial relationship, and notice of any potential conflict of interest resulting from the current owndership or beneficial interest of each person making the disclosure having any of the relationships identified in Section 50-35 of the Code and on the disclosure form provided by the Department with the Invitation for Bids in the Transportation Bulletin.

2) A contractor that is issued a Certificate of Eligibility and that intends to make application for Authorization to Bid on contracts in accordance with the procedures of Subpart B of this Part may file the disclosure forms with the Prequalification Section and periodically update the forms as necessary in order to comply with the disclosure requirements.

3) The Invitation for Bids issued by the Department provides space for the bidding contractor to incorporate by reference the disclosure forms on file and to certify that the forms are accurate.

(Source: Amended at 22 Ill. Reg. 20393, effective

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENTS

(NOV 4 1998)

Section 650.110 Denial or Revocation of Ratings

a) Prequalification ratings will be denied, or previously issued ratings will be revoked, in the event the Department finds the applicant or contractor to be nonresponsible. Reasons or events for a finding of nonresponsibility include but are not limited to the following. The Department shall be notified by the applicant or prequalified contractor of any information known to them which is relevant to any of the following reasons:
   1) the applicant failed to provide complete information regarding each item and schedule set forth in the application for prequalification or otherwise requested by the Department;
   2) the applicant provided false information regarding the application;
   3) the applicant is suspended pursuant to Sections 20-75 and 50-65 of the Illinois Procurement Code [30 ILCS 500/20-75 and 50-65] ~~Section-6(d)-of-the-Illinois-Purchasing-Act-(30-ILCS-505/6(d))~~ by the Department or another State agency;
   4) the applicant is suspended or debarred by the United States through a federal agency;
   5) the applicant is suspended by the Department of Labor pursuant to Section 11a of the Prevailing Wage Act [820 ILCS 130/11a];
   6) the applicant is suspended or debarred because of bid rigging or bid rotating convictions pursuant to the provisions of Article 33E of the Criminal Code of 1961 [720 ILCS 5/Art. 33E];
   7) the applicant is debarred by the operation of the antibribery provisions of Section 50-5 of the Code [30 ILCS 500/50-5]; ~~10.1 of-the-Illinois-Purchasing-Act-(30-ILCS-505/10.1);~~
   8) the applicant is suspended by operation of the antifelony conviction provisions of Section 50-10 of the Code [30 ILCS 500/50-10]; ~~10.3--of--the--Illinois--Purchasing--Act--(30---ILCS 505/10.3);~~
   9) the applicant is suspended or debarred pursuant to the operation of Section 6 of the Drug Free Workplace Act [30 ILCS 580/6];
   10) the applicant is an individual and debarred by operation of the Educational Loan Default Act [5 ILCS 385];
   11) the applicant is prequalified in an unaudited status and is awarded $600,000 in transportation contracts during a twelve month period;
   12) the applicant has failed to comply with the requirements of this Part;
   13) the applicant has filed for protection from creditors pursuant to the bankruptcy laws of the United States;
   14) the applicant's performance evaluation is at or below the levels provided in Section 650.240(e) and (f) of this Part; or
   15) the applicant has failed to execute a contract after award or has defaulted or otherwise breached its obligations on any contract or contracts awarded or approved for award by the Department.

b) If an application is denied or prequalification is revoked by the Department, the applicant shall be sent a notice of denial or revocation in lieu of a Certificate of Eligibility setting forth the reason or reasons for denial or revocation.

(Source: Amended at 22 Ill. Reg. 20393, effective NOV 4 1998)

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENTS

SUBPART B: ISSUANCE OF PLANS AND PROPOSALS

Section 650.290 Advertising for Bids

a) An advertisement for bids is published in the Transportation Bulletin ~~official-newspaper-of-the-State-of-Illinois~~.

b) The Transportation **Service** Bulletin is the official publication and invitation issued by the Department for bids on construction projects. It contains a brief description of the work involved in each project and the quantities of the major pay items. It also states the location and time when the bids will be opened.

c) The Transportation **Service** Bulletin is sent to all contractors who are prequalified with the Department. Other persons who may be interested in serving as subcontractors or material suppliers may subscribe to the Transportation **Service** Bulletin at the established subscription price from:

Illinois Department of Transportation
Bureau of Administration and Facility Services
2300 South Dirksen Parkway
Springfield, Illinois 62764
(217)785-2418 ~~782-7806~~

(Source: Amended at 22 Ill. Reg. 20393, effective NOV 4 1998)

Section 650.300 Request for Proposal Forms and Plans; Authorization to Bid

A Request for Proposal Forms and Plans and Request for Authorization to Bid (Form BD-124) is attached to the Service Bulletin. The Form BD-124 shall be used by contractors to request proposals and plans and to request formal authorization to bid on contracts advertised in the Transportation **Service** Bulletin. Anyone may obtain proposal forms and plans regardless of prequalification status. An Authorization to Bid must be granted in accordance with this Part before a prequalified contractor may submit a bid.

(Source: Amended at 22 Ill. Reg. 20393, effective NOV 4 1998)

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENTS

Section 650.310 Affidavit of Availability

a) An Affidavit of Availability (Form BC-57) is attached to the Transportation ~~Service~~ Bulletin and must be submitted with a request for Authorizations to Bid. It is a sworn statement concerning the contractor's present and pending contract commitments. The contractor shall not omit or misrepresent its work outstanding. When the contractor has uncompleted or pending work as a party of a joint venture, the contractor's responsible portion of the work shall be shown. The affidavit shall be signed by an officer or director of a corporate contractor, and otherwise, an owner shall sign. The affidavit is not required when a contractor has unlimited work ratings and an unlimited financial rating or when Authorization to Bid is not being requested. The affidavit shall include:
   1) The amount of all uncompleted work, by type, either as a principal or subcontractor together with the name of the agency under whose jurisdiction the work is being performed. All uncompleted work shall be based upon the engineer's or owner's most recent estimate.
   2) The commitment of equipment and personnel on a payroll or rental basis even though no formal contract exists.
   3) All work on which the contractor is the low bidder and which has not yet been awarded.
   4) A listing of all subcontractors and the value of work sublet.

b) Prospective bidders shall notify the Department within two working days of any low bids pending award or contracts awarded which might occur between the submission of the affidavit and the opening of bids.

c) Facsimiles of the affidavit will be accepted for analysis purposes. Authorization to Bid will not be issued without a correct, signed and notarized original affidavit in the Department's Central Bureau of Construction's possession by the cut-off date specified in the Transportation ~~Service~~ Bulletin.

(Source: Amended at 22 Ill. Reg. 20393, effective NOV 4 1998)

Section 650.315 Disclosure of Other Procurement Relationships

a) Section 50-35(h) of the Illinois Procurement Code [30 ILCS 500/50-35(h)] requires that all bids of more than $10,000 be accompanied by disclosure of all current or pending contracts, proposals, leases, or other ongoing procurement relationships the contractor has with any other unit of State government. This disclosure is required in addition to the financial interest disclosure provided at Section 650.80(d) of this Part.

b) The Department provides the form for making the required disclosure of other procurement relationships with the Invitation for Bids in the Transportation Bulletin.

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED AMENDMENTS

c) Contractors submitting an Affidavit of Availability with a request for Authorization to Bid may incorporate by reference on this disclosure form the contents of the Affidavit of Availability that are responsive to the disclosure requirement. Procurement relationships that are not included in the Affidavit of Availability shall be disclosed on the form. Contractors not required to submit an Affidavit of Availability as provided in Section 650.310(a) of this Part shall make the required disclosures on the disclosure form.

(Source: Added at 22 Ill. Reg. 20393, effective NOV 4 1998)

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

1) Heading of the Part: Pay Plan

2) Code Citation: 80 Ill. Adm. Code 310

3) Section Number: Peremptory Action:
310.Appendix A, Table I Amended

4) Reference to the specific State or Federal Court Order, Federal Rule or Statute which requires this Peremptory Rulemaking: Section 1-5(d) of the Illinois Administrative Procedure Act [5 ILCS 100/1-5(d)]

5) Statutory Authority: Authorized by Sections 8 and 8a of the Personnel Code [20 ILCS 415/8 and 8a]

6) Effective Date: November 5, 1998

7) A Complete Description of the Subjects and Issues Involved: In Section 310.Table I RC-009 (Institutional Employees, AFSCME), the abolished Transportation Officer I and Transportation Coordinator titles are being replaced by the Transportation Officer, effective October 15, 1998. The Transportation Officer's salary range will be parallel with the Transportation Officer I ($2,196 - 3,109/monthly).

8) Does this rulemaking contain an automatic repeal date? No

9) Date Filed in Agency's Principal Office: November 5, 1998

10) A copy of the peremptory amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection. Copies of all Pay Plan and Collective Bargaining contracts are available upon request from the Division of Technical Services.

11) Is this rulemaking in compliance with Section 5-50 of the Illinois Administrative Procedure Act? Yes

12) Are there any proposed amendments pending to this Part? Yes

Section Numbers	Proposed Action	Illinois Register Citation
310.110	Amended	22 Ill. Reg. 12422
310.130	Amended	22 Ill. Reg. 12422
310.290	Amended	22 Ill. Reg. 12422
310.450	Amended	22 Ill. Reg. 12422
310.495	Amended	22 Ill. Reg. 12422
310.530	Amended	22 Ill. Reg. 12422
310.540	Amended	22 Ill. Reg. 12422
310.Appendix B	Amended	22 Ill. Reg. 12422

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

310.Appendix C	Amended	22 Ill. Reg. 12422
310.Appendix D	Amended	22 Ill. Reg. 12422
310.Appendix G	Amended	22 Ill. Reg. 12422
310.230	Amended	22 Ill. Reg. 16397
310.270	Amended	22 Ill. Reg. 16397
310.280	Amended	22 Ill. Reg. 16397
310.Appendix G	Amended	22 Ill. Reg. 16397

13) Statement of Statewide Objectives: This amendment to the Pay Plan pertains only to State employees subject to the Personnel Code and does not set out any guidelines that are to be followed by local or other jurisdictional bodies within the State.

13) The name, address and telephone number of the person to whom information and questions concerning this peremptory rule shall be directed to:

Mr. Michael Murphy
Department of Central Management Services
Division of Technical Services
504 William G. Stratton Building
Springfield, Illinois 62706
(217) 782-5601

The full text of the Peremptory Amendment begins on the next page:

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES
SUBTITLE B: PERSONNEL RULES, PAY PLANS, AND POSITION CLASSIFICATIONS
CHAPTER I: DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

PART 310
PAY PLAN

SUBPART A: NARRATIVE

Section
310.20 Policy and Responsibilities
310.30 Jurisdiction
310.40 Pay Schedules
310.50 Definitions
310.60 Conversion of Base Salary to Pay Period Units
310.70 Conversion of Base Salary to Daily or Hourly Equivalents
310.80 Increases in Pay
310.90 Decreases in Pay
310.100 Other Pay Provisions
310.110 Implementation of Pay Plan Changes for Fiscal Year 1998
310.120 Interpretation and Application of Pay Plan
310.130 Effective Date
310.140 Reinstitution of Within Grade Salary Increases (Repealed)
310.150 Fiscal Year 1985 Pay Changes in Schedule of Salary Grades, Effective July 1, 1984 (Repealed)

SUBPART B: SCHEDULE OF RATES

Section
310.205 Introduction
310.210 Prevailing Rate
310.220 Negotiated Rate
310.230 Part-Time Daily or Hourly Special Services Rate
310.240 Hourly Rate
310.250 Member, Patient and Inmate Rate
310.260 Trainee Rate
310.270 Legislated and Contracted Rate
310.280 Designated Rate
310.290 Out-of-State or Foreign Service Rate
310.300 Educator Schedule for RC-063 and HR-010
310.310 Physician Specialist Rate
310.320 Annual Compensation Ranges for Executive Director and Assistant Executive Director, State Board of Elections
310.330 Excluded Classes Rate (Repealed)

SUBPART C: MERIT COMPENSATION SYSTEM

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

Section
310.410 Jurisdiction
310.420 Objectives
310.430 Responsibilities
310.440 Merit Compensation Salary Schedule
310.450 Procedures for Determining Annual Merit Increases
310.455 Intermittent Merit Increase
310.456 Merit Zone (Repealed)
310.460 Other Pay Increases
310.470 Adjustment
310.480 Decreases in Pay
310.490 Other Pay Provisions
310.495 Broad-Band Pay Range Classes
310.500 Definitions
310.510 Conversion of Base Salary to Pay Period Units
310.520 Conversion of Base Salary to Daily or Hourly Equivalents
310.530 Implementation
310.540 Annual Merit Increase Guidechart for Fiscal Year 1998
310.550 Fiscal Year 1985 Pay Changes in Merit Compensation System, effective July 1, 1984 (Repealed)

APPENDIX A Negotiated Rates of Pay
TABLE A HR-190 (Department of Central Management Services - State of Illinois Building - SEIU)
TABLE AA NR-916 (Department of Natural Resources, Teamsters)
TABLE B HR-200 (Department of Labor - Chicago, Illinois - SEIU)
TABLE C RC-069 (Firefighters, AFSCME) (Repealed)
TABLE D HR-001 (Teamsters Local #726)
TABLE E RC-020 (Teamsters Local #330)
TABLE F RC-019 (Teamsters Local #25)
TABLE G RC-045 (Automotive Mechanics, IFPE)
TABLE H RC-006 (Corrections Employees, AFSCME)
TABLE I RC-009 (Institutional Employees, AFSCME)
TABLE J RC-014 (Clerical Employees, AFSCME)
TABLE K RC-023 (Registered Nurses, INA)
TABLE L RC-008 (Boilermakers)
TABLE M RC-110 (Conservation Police Lodge)
TABLE N RC-010 (Professional Legal Unit, AFSCME)
TABLE O RC-028 (Paraprofessional Human Services Employees, AFSCME)
TABLE P RC-029 (Paraprofessional Investigatory and Law Enforcement Employees, IFPE)
TABLE Q RC-033 (Meat Inspectors, IFPE)
TABLE R RC-042 (Residual Maintenance Workers, AFSCME)
TABLE S HR-012 (Fair Employment Practices Employees, SEIU)
TABLE T HR-010 (Teachers of Deaf, IFT)
TABLE U HR-010 (Teachers of Deaf, Extracurricular Paid Activities)
TABLE V CU-500 (Corrections, Meet and Confer Employees)

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

TABLE W	RC-062 (Technical Employees, AFSCME)
TABLE X	RC-063 (Professional Employees, AFSCME)
TABLE Y	RC-063 (Educators, AFSCME)
TABLE Z	RC-063 (Physicians, AFSCME)
APPENDIX B	Schedule of Salary Grades - Monthly Rates of Pay for Fiscal Year 1998
APPENDIX C	Medical Administrator Rates for Fiscal Year 1998
APPENDIX D	Merit Compensation System Salary Schedule for Fiscal Year 1998
APPENDIX E	Teaching Salary Schedule (Repealed)
APPENDIX F	Physician and Physician Specialist Salary Schedule (Repealed)
APPENDIX G	Broad-Band Pay Range Classes Salary Schedule for Fiscal Year 1998

AUTHORITY: Implementing and authorized by Sections 8 and 8a of the Personnel Code [20 ILCS 415/8 and 8a].

SOURCE: Filed June 28, 1967; codified at 8 Ill. Reg. 1558; emergency amendment at 8 Ill. Reg. 1990, effective January 31, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 2440, effective February 15, 1984; emergency amendment at 8 Ill. Reg. 3348, effective March 5, 1984, for a maximum of 150 days; emergency amendment at 8 Ill. Reg. 4249, effective March 16, 1984, for a maximum of 150 days; emergency amendment at 8 Ill. Reg. 5704, effective April 16, 1984, for a maximum of 150 days; emergency amendment at 8 Ill. Reg. 7290, effective May 11, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 11299, effective June 25, 1984; emergency amendment at 8 Ill. Reg. 12616, effective July 1, 1984, for a maximum of 150 days; emergency amendment at 8 Ill. Reg. 15007, effective August 6, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 15367, effective August 13, 1984; emergency amendment at 8 Ill. Reg. 21310, effective October 10, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 21544, effective October 24, 1984; amended at 8 Ill. Reg. 22844, effective November 14, 1984; emergency amendment at 9 Ill. Reg. 1134, effective January 16, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 1320, effective January 23, 1985; amended at 9 Ill. Reg. 3681, effective March 12, 1985; emergency amendment at 9 Ill. Reg. 4163, effective March 15, 1985, for a maximum of 150 days; emergency amendment at 9 Ill. Reg. 9231, effective May 31, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 9420, effective June 7, 1985; amended at 9 Ill. Reg. 10663, effective July 1, 1985; emergency amendment at 9 Ill. Reg. 15043, effective September 24, 1985, for a maximum of 150 days; peremptory amendment at 10 Ill. Reg. 3325, effective January 22, 1986; amended at 10 Ill. Reg. 3230, effective January 24, 1986; emergency amendment at 10 Ill. Reg. 8904, effective May 13, 1986, for a maximum of 150 days; peremptory amendment at 10 Ill. Reg. 8928, effective May 13, 1986; emergency amendment at 10 Ill. Reg. 12090, effective June 30, 1986, for a maximum of 150 days; peremptory amendment at 10 Ill. Reg. 13675, effective July 31, 1986; peremptory amendment at 10 Ill. Reg. 14867, effective August 26, 1986; amended at 10 Ill. Reg. 15567, effective September 17, 1986; emergency amendment at 10 Ill. Reg. 17765, effective September 30, 1986, for a maximum of 150 days; peremptory amendment at 10 Ill. Reg. 19132, effective October 28, 1986; peremptory amendment at 10 Ill. Reg. 21097, effective December 9, 1986; amended at 11 Ill. Reg. 648, effective December 22, 1986; peremptory amendment at 11 Ill. Reg. 3363, effective February 3, 1987; peremptory amendment at 11 Ill. Reg. 4388, effective February 27, 1987; peremptory amendment at 11 Ill. Reg. 6291, effective March 23, 1987; amended at 11 Ill. Reg. 5901, effective March 24, 1987; emergency amendment at 11 Ill. Reg. 8787, effective April 15, 1987, for a maximum of 150 days; emergency amendment at 11 Ill. Reg. 11830, effective July 1, 1987, for a maximum of 150 days; peremptory amendment at 11 Ill. Reg. 13675, effective July 29, 1987; amended at 11 Ill. Reg. 14984, effective August 27, 1987; peremptory amendment at 11 Ill. Reg. 15273, effective September 1, 1987; peremptory amendment 11 Ill. Reg. 17919, effective October 19, 1987; peremptory amendment at 11 Ill. Reg. 19812, effective November 19, 1987; emergency amendment at 11 Ill. Reg. 20664, effective December 4, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 20778, effective December 11, 1987; peremptory amendment at 12 Ill. Reg. 3811, effective January 27, 1988; peremptory amendment at 12 Ill. Reg. 5459, effective March 3, 1988; amended at 12 Ill. Reg. 6073, effective March 21, 1988; peremptory amendment at 12 Ill. Reg. 7783, effective April 14, 1988; emergency amendment at 12 Ill. Reg. 7734, effective April 15, 1988, for a maximum of 150 days; peremptory amendment at 12 Ill. Reg. 8135, effective April 22, 1988; peremptory amendment at 12 Ill. Reg. 9745, effective May 23, 1988; emergency amendment at 12 Ill. Reg. 11778, effective July 1, 1988, for a maximum of 150 days; emergency amendment at 12 Ill. Reg. 12895, effective July 18, 1988, for a maximum of 150 days; peremptory amendment at 12 Ill. Reg. 13306, effective July 27, 1988; corrected at 12 Ill. Reg. 13359; amended at 12 Ill. Reg. 14630, effective September 6, 1988; amended at 12 Ill. Reg. 20449, effective November 28, 1988; peremptory amendment at 12 Ill. Reg. 20584, effective November 28, 1988; peremptory amendment at 13 Ill. Reg. 8080, effective May 10, 1989; amended at 13 Ill. Reg. 8849, effective May 30, 1989; peremptory amendment at 13 Ill. Reg. 8970, effective May 26, 1989; emergency amendment at 13 Ill. Reg. 10967, effective June 20, 1989, for a maximum of 150 days; emergency amendment expired on November 17, 1989; amended at 13 Ill. Reg. 11451, effective June 28, 1989; emergency amendment at 13 Ill. Reg. 11854, effective July 1, 1989, for a maximum of 150 days; corrected at 13 Ill. Reg. 12647; peremptory amendment at 13 Ill. Reg. 12887, effective July 24, 1989; amended at 13 Ill. Reg. 16950, effective October 20, 1989; amended at 13 Ill. Reg. 19221, effective December 12, 1989; amended at 14 Ill. Reg. 615, effective January 2, 1990; peremptory amendment at 14 Ill. Reg. 1627, effective January 11, 1990; amended at 14 Ill. Reg. 4455, effective March 12, 1990; peremptory amendment at 14 Ill. Reg. 7652, effective May 7, 1990; amended at 14 Ill. Reg. 10002, effective June 11, 1990; emergency amendment at 14 Ill. Reg. 11330, effective June 29, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 14361, effective August 24, 1990; emergency amendment at 14 Ill. Reg. 15570, effective September 11, 1990, for a maximum of 150 days; emergency amendment expired on February 8, 1991; corrected at 14 Ill. Reg. 16092; peremptory amendment at 14 Ill. Reg. 17098, effective September 26, 1990; amended at 14 Ill. Reg. 17189, effective October 2, 1990; amended at 14 Ill.

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

Reg. 17189, effective October 19, 1990; amended at 14 Ill. Reg. 18719, effective November 13, 1990; peremptory amendment at 14 Ill. Reg. 18854, effective November 13, 1990; peremptory amendment at 15 Ill. Reg. 663, effective January 7, 1991; amended at 15 Ill. Reg. 3296, effective February 14, 1991; amended at 15 Ill. Reg. 4401, effective March 11, 1991; peremptory amendment at 15 Ill. Reg. 5100, effective March 20, 1991; peremptory amendment at 15 Ill. Reg. 5465, effective April 2, 1991; emergency amendment at 15 Ill. Reg. 10485, effective July 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 11080, effective July 19, 1991; amended at 15 Ill. Reg. 13080, effective August 21, 1991; amended at 15 Ill. Reg. 14210, effective September 23, 1991; emergency amendment at 16 Ill. Reg. 711, effective December 26, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 3450, effective February 20, 1992; peremptory amendment at 16 Ill. Reg. 5068, effective March 11, 1992; peremptory amendment at 16 Ill. Reg. 7056, effective April 20, 1992; emergency amendment at 16 Ill. Reg. 8239, effective May 19, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 8382, effective May 26, 1992; emergency amendment at 16 Ill. Reg. 13950, effective August 19, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 14452, effective September 4, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 238, effective December 23, 1992; peremptory amendment at 17 Ill. Reg. 498, effective December 18, 1992; amended at 17 Ill. Reg. 590, effective January 4, 1993; amended at 17 Ill. Reg. 1819, effective February 2, 1993; amended at 17 Ill. Reg. 6441, effective April 8, 1993; emergency amendment at 17 Ill. Reg. 12900, effective July 22, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 13409, effective July 29, 1993; emergency amendment at 17 Ill. Reg. 13789, effective August 9, 1993, for a maximum of 150 days; emergency amendment at 17 Ill. Reg. 14666, effective August 26, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 19103, effective October 25, 1993; emergency amendment at 17 Ill. Reg. 21858, effective December 1, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 22514, effective December 15, 1993; amended at 18 Ill. Reg. 227, effective December 17, 1993; amended at 18 Ill. Reg. 1107, effective January 18, 1994; amended at 18 Ill. Reg. 5146, effective March 21, 1994; peremptory amendment at 18 Ill. Reg. 9562, effective June 13, 1994; emergency amendment at 18 Ill. Reg. 11299, effective July 1, 1994, for a maximum of 150 days; peremptory amendment at 18 Ill. Reg. 13476, effective August 17, 1994; emergency amendment at 18 Ill. Reg. 14417, effective September 9, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 16545, effective October 31, 1994; peremptory amendment at 18 Ill. Reg. 16708, effective October 28, 1994; amended at 18 Ill. Reg. 17191, effective November 21, 1994; amended at 19 Ill. Reg. 1024, effective January 24, 1995; peremptory amendment at 19 Ill. Reg. 2481, effective February 17, 1995; peremptory amendment at 19 Ill. Reg. 3073, effective February 17, 1995; amended at 19 Ill. Reg. 3456, effective March 7, 1995; peremptory amendment at 19 Ill. Reg. 5145, effective March 14, 1995; amended at 19 Ill. Reg. 6452, effective May 2, 1995; peremptory amendment at 19 Ill. Reg. 6688, effective May 1, 1995; amended at 19 Ill. Reg. 7841, effective June 1, 1995; amended at 19 Ill. Reg. 8156, effective June 12, 1995; amended at 19 Ill. Reg. 9096, effective June 27, 1995; emergency amendment at 19 Ill. Reg. 11954,

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

effective August 1, 1995, for a maximum of 150 days; peremptory amendment at 19 Ill. Reg. 13979, effective September 19, 1995; peremptory amendment at 19 Ill. Reg. 15103, effective October 12, 1995; amended at 19 Ill. Reg. 16160, effective November 28, 1995; amended at 20 Ill. Reg. 308, effective December 22, 1995; emergency amendment at 20 Ill. Reg. 4060, effective February 27, 1996, for a maximum of 150 days; peremptory amendment at 20 Ill. Reg. 6334, effective April 22, 1996; peremptory amendment at 20 Ill. Reg. 7434, effective May 14, 1996; amended at 20 Ill. Reg. 8301, effective June 11, 1996; amended at 20 Ill. Reg. 8657, effective June 20, 1996; amended at 20 Ill. Reg. 9006, effective June 26, 1996; amended at 20 Ill. Reg. 9925, effective July 10, 1996; emergency amendment at 20 Ill. Reg. 10213, effective July 15, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 10841, effective August 5, 1996; peremptory amendment at 20 Ill. Reg. 13408, effective September 24, 1996; amended at 20 Ill. Reg. 15018, effective November 7, 1996; peremptory amendment at 20 Ill. Reg. 15092, effective November 7, 1996; emergency amendment at 21 Ill. Reg. 1023, effective January 6, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 1629, effective January 22, 1997; amended at 21 Ill. Reg. 5144, effective April 15, 1997; amended at 21 Ill. Reg. 6444, effective May 15, 1997; amended at 21 Ill. Reg. 7118, effective June 3, 1997; emergency amendment at 21 Ill. Reg. 10061, effective July 21, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 12859, effective September 8, 1997, for a maximum of 150 days; peremptory amendment at 21 Ill. Reg. 14267, effective October 14, 1997; peremptory amendment at 21 Ill. Reg. 14589, effective October 15, 1997; peremptory amendment at 21 Ill. Reg. 15030, effective November 10, 1997; amended at 21 Ill. Reg. 16344, effective December 9, 1997; peremptory amendment at 21 Ill. Reg. 16465, effective December 4, 1997; peremptory amendment at 21 Ill. Reg. 17167, effective December 9, 1997; peremptory amendment at 22 Ill. Reg. 1593, effective December 22, 1997; amended at 22 Ill. Reg. 2580, effective January 14, 1998; peremptory amendment at 22 Ill. Reg. 4326, effective February 13, 1998; peremptory amendment at 22 Ill. Reg. 5108, effective February 26, 1998; peremptory amendment at 22 Ill. Reg. 5749, effective March 3, 1998; amended at 22 Ill. Reg. 6204, effective March 12, 1998; peremptory amendment at 22 Ill. Reg 7053, effective April 1, 1998; peremptory amendment at 22 Ill. Reg. 7320, effective April 10, 1998; peremptory amendment at 22 Ill. Reg. 7692, effective April 20, 1998; emergency amendment at 22 Ill. Reg. 12607, effective July 2, 1998, for a maximum of 150 days; peremptory amendment at 22 Ill. Reg. 15489, effective August 7, 1998; amended at 22 Ill. Reg. 16158, effective August 31, 1998; peremptory amendment at 22 Ill. Reg. 19105, effective September 30, 1998; peremptory amendment at 22 Ill. Reg. 19943, effective October 27, 1998; peremptory amendment at 22 Ill. Reg. 20406, effective November 5, 1998.

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

Section 310.APPENDIX A Negotiated Rates of Pay

Section 310.TABLE I RC-009 (Institutional Employees, AFSCME)

Effective: July 1, 1997

	STEPS					
	1c 3/	1b 2/	1a 1/	1	2	3
Activity Program Aide I	1412	1454	1498	1543	1603	1667
Activity Program Aide II	1456	1500	1545	1591	1652	1717
Apparel/Dry Goods Specialist I	1456	1500	1545	1591	1652	1717
Apparel/Dry Goods Specialist II	1552	1599	1647	1696	1762	1829
Apparel/Dry Goods Specialist III	1938	1996	2056	2118	2207	2294
Children's Shelter Care Associate	1726	1778	1831	1886	1858	2037
Clinical Laboratory Associate	1546	1592	1640	1689	1747	1809
Clinical Laboratory Phlebotomist	1495	1540	1586	1634	1689	1744
Clinical Laboratory Technician I	1724	1776	1829	1884	1966	2037
Clinical Laboratory Technician II	1885	1942	2000	2060	2148	2228
Commissary Clerk	1444	1487	1532	1578	1628	1677
Commissary Manager I	1490	1535	1581	1628	1678	1740
Commissary Manager II	1609	1657	1707	1758	1826	1896
Cook I	1536	1582	1629	1678	1742	1795
Cook II	1664	1714	1765	1818	1888	1963
Educator Aide	1775	1828	1883	1939	2025	2102
Facility Assistant Fire Chief	1852	1908	1965	2024	2106	2182
Facility Fire Safety Coordinator	1852	1908	1965	2024	2106	2182
Facility Firefighter	1715	1766	1819	1874	1936	2013
Florist II	1775	1828	1883	1939	2025	2102
Institutional Maintenance Worker	1594	1642	1691	1742	1804	1863
Laboratory Assistant	1399	1441	1484	1529	1581	1632
Laboratory Associate I	1724	1776	1829	1884	1966	2037
Laboratory Associate II	1885	1942	2000	2060	2148	2228
Licensed Practical Nurse I	1709	1760	1813	1867	1936	2015
Licensed Practical Nurse II	1792	1846	1901	1958	2045	2121
Locksmith	1967	2026	2087	2150	2240	2336
Mental Health Technician I	1456	1500	1545	1591	1652	1717
Mental Health Technician II	1552	1599	1647	1696	1762	1829
Mental Health Technician III	1609	1657	1707	1758	1826	1896
Mental Health Technician IV	1664	1714	1765	1818	1888	1963
Mental Health Technician V	1726	1778	1831	1886	1958	2037
Mental Health Technician VI	1746	1798	1852	1908	1981	2060
Mental Health Technician Trainee I	1360	1401	1443	1486	1529	1581
Musician	1609	1657	1707	1758	1826	1896
Pest Control Operator	1709	1760	1813	1867	1936	2015
Physical Therapy Aide I	1412	1454	1498	1543	1603	1667
Physical Therapy Aide II	1552	1599	1647	1696	1762	1829

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

Physical Therapy Aide III	1726	1778	1831	1886	1958	2037
Rehabilitation Workshop Instructor I	1609	1657	1707	1758	1826	1896
Rehabilitation Workshop Instructor II	1792	1846	1901	1958	2045	2121
Residential Care Worker	1726	1778	1831	1886	1958	2037
Residential Care Worker Trainee	1599	1647	1696	1747	1814	1879
Security Therapy Aide I	1943	2001	2061	2123	2212	2302
Security Therapy Aide II	2132	2196	2262	2330	2432	2531
Security Therapy Aide III	2226	2293	2362	2433	2543	2654
Security Therapy Aide Trainee	1660	1710	1761	1814	1882	1955
Social Service Aide I	1609	1657	1707	1758	1826	1896
Social Service Aide II	1726	1778	1831	1886	1958	2037
Social Service Aide Trainee	1399	1441	1484	1529	1581	1632
Support Services Supervisor I	1709	1760	1813	1867	1936	2015
Support Services Supervisor II	1885	1942	2000	2060	2148	2228
Support Service Worker II	1444	1487	1532	1578	1628	1677
Support Service Worker III	1536	1582	1629	1678	1742	1795
Transportation Coordinator	2030	2091	2154	2219	2309	2412
Transportation Officer I	2132	2196	2262	2330	2432	2531
Veterans Nursing Assistant - Certified	1609	1657	1707	1758	1826	1896

	STEPS (cont.)			
	4	5	6	7
Activity Program Aide I	1731	1799	1867	1958
Activity Program Aide II	1782	1852	1923	2016
Apparel/Dry Goods Specialist I	1782	1852	1923	2016
Apparel/Dry Goods Specialist II	1899	1973	2050	2151
Apparel/Dry Goods Specialist III	2388	2476	2559	2704
Children's Shelter Care Associate	2114	2196	2279	2405
Clinical Laboratory Associate	1870	1931	1995	2102
Clinical Laboratory Phlebotomist	1804	1860	1920	2017
Clinical Laboratory Technician I	2115	2189	2268	2394
Clinical Laboratory Technician II	2321	2405	2497	2636
Commissary Clerk	1731	1785	1836	1929
Commissary Manager I	1792	1846	1904	1996
Commissary Manager II	1969	2045	2123	2228
Cook I	1859	1918	1979	2081
Cook II	2037	2116	2198	2308
Educator Aide	2182	2261	2340	2472
Facility Assistant Fire Chief	2266	2350	2436	2575
Facility Fire Safety Coordinator	2266	2350	2436	2575
Facility Firefighter	2082	2155	2226	2342
Florist II	2182	2261	2340	2472
Institutional Maintenance Worker	1930	1993	2060	2172

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

Laboratory Assistant	1678	1735	1782	1874
Laboratory Associate I	2115	2189	2268	2394
Laboratory Associate II	2321	2405	2497	2636
Licensed Practical Nurse I	2088	2170	2240	2360
Licensed Practical Nurse II	2204	2285	2367	2519
Locksmith	2431	2522	2619	2768
Mental Health Technician I	1782	1852	1923	2016
Mental Health Technician II	1899	1973	2050	2151
Mental Health Technician III	1969	2045	2123	2228
Mental Health Technician IV	2037	2116	2198	2308
Mental Health Technician V	2114	2196	2279	2405
Mental Health Technician VI	2140	2222	2306	2425
Mental Health Technician Trainee I	1628	1674	1722	1811
Musician	1969	2045	2123	2228
Pest Control Operator	2088	2170	2240	2360
Physical Therapy Aide I	1731	1799	1867	1958
Physical Therapy Aide II	1899	1973	2050	2151
Physical Therapy Aide III	2114	2196	2279	2405
Rehabilitation Workshop Instructor I	1969	2045	2123	2228
Rehabilitation Workshop Instructor II	2204	2285	2367	2519
Residential Care Worker	2114	2196	2279	2405
Residential Care Worker Trainee	1950	2013	2082	2192
Security Therapy Aide I	2397	2486	2582	2724
Security Therapy Aide II	2643	2745	2852	3018
Security Therapy Aide III	2767	2878	2986	3161
Security Therapy Aide Trainee	2025	2101	2173	2287
Social Service Aide I	1969	2045	2123	2228
Social Service Adie II	2114	2196	2279	2405
Social Service Aide Trainee	1678	1735	1782	1874
Support Service Supervisor I	2088	2170	2240	2360
Support Service Supervisor II	2321	2405	2497	2636
Support Service Worker II	1731	1785	1836	1929
Support Service Worker III	1859	1918	1979	2081
Transportation Coordinator	2509	2607	2706	2861
Transportation Officer I	2643	2745	2852	3018
Veterans Nursing Assistant - Certified	1969	2045	2123	2228

Note: Employees subject to the alternative pension formula will be paid at rates that are 3% higher than those stated above.

Full-time employees who are receiving the flat-rate pension formula will receive a one-time lump sum payment of $565.

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

Effective: July 1, 1998

	STEPS					
	1c	1b	1a	1	2	3
Activity Program Aide I	1454	1498	1543	1589	1651	1717
Activity Program Aide II	1500	1545	1591	1639	1702	1769
Apparel/Dry Goods Specialist I	1500	1545	1591	1639	1702	1769
Apparel/Dry Goods Specialist II	1599	1647	1696	1747	1815	1884
Apparel/Dry Goods Specialist III	1996	2056	2118	2182	2273	2363
Children's Shelter Care Associate	1778	1831	1886	1943	2017	2098
Clinical Laboratory Associate	1592	1640	1689	1740	1799	1863
Clinical Laboratory Phlebotomist	1540	1586	1634	1683	1740	1796
Clinical Laboratory Technician I	1776	1829	1884	1941	2025	2098
Clinical Laboratory Technician II	1942	2000	2060	2122	2212	2295
Cook I	1582	1629	1678	1728	1794	1849
Cook II	1714	1765	1818	1873	1945	2022
Educator Aide	1828	1883	1939	1997	2086	2165
Facility Assistant Fire Chief	1908	1965	2024	2085	2169	2247
Facility Fire Safety Coordinator	1908	1965	2024	2085	2169	2247
Facility Firefighter	1766	1819	1874	1930	1994	2073
Florist II	1828	1883	1939	1997	2086	2165
Institutional Maintenance Worker	1642	1691	1742	1794	1858	1919
Laboratory Assistant	1441	1484	1529	1575	1628	1681
Laboratory Associate I	1776	1829	1884	1941	2025	2098
Laboratory Associate II	1942	2000	2060	2122	2212	2295
Licensed Practical Nurse I	1760	1813	1867	1923	1994	2075
Licensed Practical Nurse II	1846	1901	1958	2017	2106	2185
Locksmith	2413	2484	2557	2633	2749	2868
Mental Health Technician I	1500	1545	1591	1639	1702	1769
Mental Health Technician II	1599	1647	1696	1747	1815	1884
Mental Health Technician III	1657	1707	1758	1811	1881	1953
Mental Health Technician IV	1714	1765	1818	1873	1945	2022
Mental Health Technician V	1778	1831	1886	1943	2017	2098
Mental Health Technician VI	1798	1852	1908	1965	2040	2122
Mental Health Technician Trainee I	1401	1443	1486	1531	1575	1628
Musician	1657	1707	1758	1811	1881	1953
Pest Control Operator	1760	1813	1867	1923	1994	2075
Physical Therapy Aide I	1454	1498	1543	1589	1651	1717
Physical Therapy Aide II	1599	1647	1696	1747	1815	1884
Physical Therapy Aide III	1778	1831	1886	1943	2017	2098
Rehabilitation Workshop Instructor I	1657	1707	1758	1811	1881	1953
Rehabilitation Workshop Instructor II	1846	1901	1958	2017	2106	2185
Residential Care Worker	1778	1831	1886	1943	2017	2098
Residential Care Worker	1647	1696	1747	1799	1868	1935

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

Trainee						
Security Therapy Aide I	2001	2061	2123	2187	2278	2371
Security Therapy Aide II	2196	2262	2330	2400	2505	2607
Security Therapy Aide III	2293	2362	2433	2506	2619	2734
Security Therapy Aide Trainee	1710	1761	1814	1868	1938	2014
Social Service Aide I	1657	1707	1758	1811	1881	1953
Social Service Aide II	1778	1831	1886	1943	2017	2098
Social Service Aide Trainee	1441	1484	1529	1575	1628	1681
~~Transportation-Coordinator~~	~~2091~~	~~2154~~	~~2219~~	~~2286~~	~~2370~~	~~2484~~
~~Transportation-Officer-I~~	~~2196~~	~~2262~~	~~2330~~	~~2400~~	~~2505~~	~~2607~~
Veterans Nursing Assistant - Certified	1657	1707	1758	1811	1881	1953

	S T E P S (cont.)			
	4	5	6	7
Activity Program Aide I	1783	1853	1923	2017
Activity Program Aide II	1835	1908	1981	2076
Apparel/Dry Goods Specialist I	1835	1908	1981	2076
Apparel/Dry Goods Specialist II	1956	2032	2112	2216
Apparel/Dry Goods Specialist III	2460	2550	2636	2785
Children's Shelter Care Associate	2177	2262	2347	2477
Clinical Laboratory Associate	1926	1989	2055	2165
Clinical Laboratory Phlebotomist	1858	1916	1978	2078
Clinical Laboratory Technician I	2178	2255	2336	2466
Clinical Laboratory Technician II	2391	2477	2572	2715
Cook I	1915	1976	2038	2143
Cook II	2098	2179	2264	2377
Educator Aide	2247	2329	2410	2546
Facility Assistant Fire Chief	2334	2421	2509	2652
Facility Fire Safety Coordinator	2334	2421	2509	2652
Facility Firefighter	2144	2220	2293	2412
Florist II	2247	2329	2410	2546
Institutional Maintenance Worker	1988	2053	2122	2237
Laboratory Assistant	1728	1787	1835	1930
Laboratory Associate I	2178	2255	2336	2466
Laboratory Associate II	2391	2477	2572	2715
Licensed Practical Nurse I	2151	2235	2307	2431
Licensed Practical Nurse II	2270	2354	2438	2595
Locksmith	2987	3104	3220	3405
Mental Health Technician I	1835	1908	1981	2076
Mental Health Technician II	1956	2032	2112	2216
Mental Health Technician III	2028	2106	2187	2295
Mental Health Technician IV	2098	2179	2264	2377
Mental Health Technician V	2177	2262	2347	2477
Mental Health Technician VI	2204	2289	2375	2498
Mental Health Technician Trainee I	1677	1724	1774	1865

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

Musician	2028	2106	2187	2295
Pest Control Operator	2151	2235	2307	2431
Physical Therapy Aide I	1783	1853	1923	2017
Physical Therapy Aide II	1956	2032	2112	2216
Physical Therapy Aide III	2177	2262	2347	2477
Rehabilitation Workshop Instructor I	2028	2106	2187	2295
Rehabilitation Workshop Instructor II	2270	2354	2438	2595
Residential Care Worker	2177	2262	2347	2477
Residential Care Worker Trainee	2009	2073	2144	2258
Security Therapy Aide I	2469	2561	2659	2806
Security Therapy Aide II	2722	2827	2938	3109
Security Therapy Aide III	2850	2964	3076	3256
Security Therapy Aide Trainee	2086	2164	2238	2356
Social Service Aide I	2028	2106	2187	2295
Social Service Aide II	2177	2262	2347	2477
Social Service Aide Trainee	1728	1787	1835	1930
~~Transportation-Coordinator~~	~~2504~~	~~2605~~	~~2787~~	~~2947~~
~~Transportation-Officer-I~~	~~2722~~	~~2827~~	~~2938~~	~~3109~~
Veterans Nursing Assistant - Certified	2028	2106	2187	2295

Note: Employees subject to the alternative pension formula will be paid at rates that are 3% higher than those stated above.

Effective: September 23, 1998

	S T E P S					
	1c	1b	1a	1	2	3
Support Service Coordinator I	1760	1813	1867	1923	1994	2075
Support Service Coordinator II	1942	2000	2060	2122	2212	2295
Support Service Lead	1487	1532	1578	1625	1677	1727
Support Service Worker	1582	1629	1678	1728	1794	1849

	S T E P S (cont.)			
	4	5	6	7
Support Service Coordinator	2151	2235	2307	2431
Support Service Coordinator II	2391	2477	2572	2715
Support Service Lead	1783	1839	1891	1987
Support Service Worker	1915	1976	2038	2143

Note: Employees subject to the alternative pension formula will be paid at rates that are 3% higher than those stated above.

Effective: October 15, 1998

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

	STEPS					
	1c	1b	1a	1	2	3
Transportation Officer	2196	2262	2330	2400	2505	2607

	STEPS (cont.)			
	4	5	6	7
Transportation Officer	2722	2827	2938	3109

NOTE: Employees subject to the alternative pension formula will be paid at rates that are 3% higher than those stated above.

Effective: July 1, 1999

	STEPS					
	1c	1b	1a	1	2	3
Activity Program Aide I	1498	1543	1589	1637	1701	1769
Activity Program Aide II	1545	1591	1639	1688	1753	1822
Apparel/Dry Goods Specialist I	1545	1591	1639	1688	1753	1822
Apparel/Dry Goods Specialist II	1647	1696	1747	1799	1869	1941
Apparel/Dry Goods Specialist III	2056	2118	2182	2247	2341	2434
Children's Shelter Care Associate	1831	1886	1943	2001	2078	2161
Clinical Laboratory Associate	1640	1689	1740	1792	1853	1919
Clinical Laboratory Phlebotomist	1586	1634	1683	1733	1792	1850
Clinical Laboratory Technician I	1829	1884	1941	1999	2086	2161
Clinical Laboratory Technician II	2000	2060	2122	2186	2278	2364
Cook I	1629	1678	1728	1780	1848	1904
Cook II	1765	1818	1873	1929	2003	2083
Educator Aide	1883	1939	1997	2057	2149	2230
Facility Assistant Fire Chief	1965	2024	2085	2148	2234	2314
Facility Fire Safety Coordinator	1965	2024	2085	2148	2234	2314
Facility Firefighter	1819	1874	1930	1988	2054	2135
Florist II	1883	1939	1997	2057	2149	2230
Institutional Maintenance Worker	1691	1742	1794	1848	1914	1977
Laboratory Assistant	1484	1529	1575	1622	1677	1731
Laboratory Associate I	1829	1884	1941	1999	2086	2161
Laboratory Associate II	2000	2060	2122	2186	2278	2364
Licensed Practical Nurse I	1813	1867	1923	1981	2054	2137
Licensed Practical Nurse II	1901	1958	2017	2078	2169	2251
Locksmith	2485	2559	2634	2712	2831	2954
Mental Health Technician I	1545	1591	1639	1688	1753	1822
Mental Health Technician II	1647	1696	1747	1799	1869	1941
Mental Health Technician III	1707	1758	1811	1865	1937	2012
Mental Health Technician IV	1765	1818	1873	1929	2003	2083
Mental Health Technician V	1831	1886	1943	2001	2078	2161
Mental Health Technician VI	1852	1908	1965	2024	2101	2186
Mental Health Technician Trainee I	1443	1486	1531	1577	1622	1677

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

Musician	1707	1758	1811	1865	1937	2012
Pest Control Operator	1813	1867	1923	1981	2054	2137
Physical Therapy Aide I	1498	1543	1589	1637	1701	1769
Physical Therapy Aide II	1647	1696	1747	1799	1869	1941
Physical Therapy Aide III	1831	1886	1943	2001	2078	2161
Rehabilitation Workshop Instructor I	1707	1758	1811	1865	1937	2012
Rehabilitation Workshop Instructor II	1901	1958	2017	2078	2169	2251
Residential Care Worker	1831	1886	1943	2001	2078	2161
Residential Care Worker Trainee	1696	1747	1799	1853	1924	1993
Security Therapy Aide I	2061	2123	2187	2253	2346	2442
Security Therapy Aide II	2262	2330	2400	2472	2580	2685
Security Therapy Aide III	2362	2433	2506	2581	2698	2816
Security Therapy Aide Trainee	1761	1814	1868	1924	1996	2074
Social Service Aide I	1707	1758	1811	1865	1937	2012
Social Service Aide II	1831	1886	1943	2001	2078	2161
Social Service Aide Trainee	1484	1529	1575	1622	1677	1731
Support Service Lead	1532	1578	1625	1674	1727	1779
Support Service Coordinator I	1813	1867	1923	1981	2054	2137
Support Service Coordinator II	2000	2060	2122	2186	2278	2364
Support Service Worker	1629	1678	1728	1780	1848	1904
Transportation Officer	2262	2330	2400	2472	2580	2685
~~Transportation Coordinator~~	~~2154~~	~~2219~~	~~2286~~	~~2355~~	~~2449~~	~~2559~~
~~Transportation Officer I~~	~~2262~~	~~2330~~	~~2400~~	~~2472~~	~~2580~~	~~2685~~
Veterans Nursing Assistant - Certified	1707	1758	1811	1865	1937	2012

	STEPS (cont.)			
	4	5	6	7
Activity Program Aide I	1836	1909	1981	2078
Activity Program Aide II	1890	1965	2040	2138
Apparel/Dry Goods Specialist I	1890	1965	2040	2138
Apparel/Dry Goods Specialist II	2015	2093	2175	2282
Apparel/Dry Goods Specialist III	2534	2627	2715	2869
Children's Shelter Care Associate	2242	2330	2417	2551
Clinical Laboratory Associate	1984	2049	2117	2230
Clinical Laboratory Phlebotomist	1914	1973	2037	2140
Clinical Laboratory Technician I	2243	2323	2406	2540
Clinical Laboratory Technician II	2463	2551	2649	2796
Cook I	1972	2035	2099	2207
Cook II	2161	2244	2332	2448
Educator Aide	2314	2399	2482	2622
Facility Assistant Fire Chief	2404	2494	2584	2732
Facility Fire Safety Coordinator	2404	2494	2584	2732

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

Facility Firefighter	2208	2287	2362	2484
Florist II	2314	2399	2482	2622
Institutional Maintenance Worker	2048	2115	2186	2304
Laboratory Assistant	1780	1841	1890	1988
Laboratory Associate I	2243	2323	2406	2540
Laboratory Associate II	2463	2551	2649	2796
Licensed Practical Nurse I	2216	2302	2376	2504
Licensed Practical Nurse II	2338	2425	2511	2673
Locksmith	3077	3197	3317	3507
Mental Health Technician I	1890	1965	2040	2138
Mental Health Technician II	2015	2093	2175	2282
Mental Health Technician III	2089	2169	2253	2364
Mental Health Technician IV	2161	2244	2332	2448
Mental Health Technician V	2242	2330	2417	2551
Mental Health Technician VI	2270	2358	2446	2573
Mental Health Technician Trainee I	1727	1776	1827	1921
Musician	2089	2169	2253	2364
Pest Control Operator	2216	2302	2376	2504
Physical Therapy Aide I	1836	1909	1981	2078
Physical Therapy Aide II	2015	2093	2175	2282
Physical Therapy Aide III	2242	2330	2417	2551
Rehabilitation Workshop Instructor I	2089	2169	2253	2364
Rehabilitation Workshop Instructor II	2338	2425	2511	2673
Residential Care Worker	2242	2330	2417	2551
Residential Care Worker Trainee	2069	2135	2208	2326
Security Therapy Aide I	2543	2638	2739	2890
Security Therapy Aide II	2804	2912	3026	3202
Security Therapy Aide III	2936	3053	3168	3354
Security Therapy Aide Trainee	2149	2229	2305	2427
Social Service Aide I	2089	2169	2253	2364
Social Service Aide II	2242	2330	2417	2551
Social Service Aide Trainee	1780	1841	1890	1988
Support Service Lead	1836	1894	1948	2047
Support Service Coordinator I	2216	2302	2376	2504
Support Service Coordinator II	2463	2551	2649	2796
Support Service Worker	1972	2035	2099	2207
Transportation Officer	2804	2912	3026	3202
~~Transportation Coordinator~~	~~2662~~	~~2766~~	~~2871~~	~~3035~~
~~Transportation Officer I~~	~~2804~~	~~2912~~	~~3026~~	~~3202~~
Veterans Nursing Assistant - Certified	2089	2169	2253	2364

NOTE: Employees subject to the alternative pension formula will be paid at

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PEREMPTORY AMENDMENT

rates that are 3% higher than those stated above.

(Source: Peremptory amendment at 22 Ill. Reg. 20406, effective November 5, 1998)

ILLINOIS COMMERCE COMMISSION

NOTICE OF REFUSAL TO MEET THE OBJECTION OF THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES

1) Heading of the Part: Electric Reliability

2) Code Citation: 83 Ill. Adm. Code 411

3) Section Numbers: Action:
411.190 Refused

4) Date Notice of Proposed Rules Published in the Register: June 26, 1998 at 22 Ill. Reg. 10945

5) Date JCAR Statement of Objection Published in the Register: November 6, 1998 at 22 Ill. Reg. 19664

6) Summary of Action Taken by the Agency: The Illinois Commerce Commission refuses to withdraw or modify the proposed rules. While there is no explicit statutory language pre-empting municipal ordinances on vegetation management, the Commission notes that there is a line of cases supporting the Commission's authority to pre-empt local ordinances regarding the provision of services subject to the Public Utilities Act. See, for example, "*Chicago Motor Coach Co. v. City of Chicago*", 357 Ill. 200 (1930), in which the Court stated:

> By the creation of the Illinois Commerce Commission with the comprehensive powers over public utilities which have been mentioned, the Legislature withdrew from municipalities in the state that power which they had previously exercised in regard to the use of the streets by such utilities and conferred those powers on the Commerce Commission. (357 Ill. at 213)

The Commission is of the opinion that there is sufficient judicial support for its position in Section 411.190 of the rules and, therefore, is of the opinion that the rules should be adopted over the objection of the Joint Committee on Administrative Rules.

ILLINOIS COMMERCE COMMISSION

NOTICE OF REFUSAL TO MEET THE OBJECTION OF THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES

1) Heading of the Part: Non-Discrimination in Affiliate Transactions for Electric Utilities

2) Code Citation: 83 Ill. Adm. Code 450

3)

Section Numbers:	Action:
450.10	Refusal
450.20	Refusal
450.25	Refusal
450.30	Refusal
450.40	Refusal
450.50	Refusal
450.60	Refusal
450.70	Refusal
450.80	Refusal
450.85	Refusal
450.90	Refusal
450.100	Refusal
450.110	Refusal
450.120	Refusal
450.130	Refusal
450.140	Refusal
450.150	Refusal
450.160	Refusal

4) Date Notice of Proposed Rules Published in the Register: June 26, 1998 at 22 Ill. Reg. 10947

5) Date JCAR Statement of Objection Published in the Register: November 6, 1998 at 22 Ill. Reg. 19665

6) Summary of Action Taken by the Agency: The Illinois Commerce Commission refuses to withdraw or modify the rules. JCAR objected to a provision of the proposed rules requiring utilities to maintain logs of transactions between the utility and its affiliated interests as unduly burdensome in light of the public interest served.

Although the Commission recognizes that the maintenance of a log may create administrative costs for utilities, this requirement is a reasonable approach to aid the Commission in judging future claims that utilities are engaging in a pattern of discrimination in favor of their affiliated interests and customers of their affiliated interests. The Commission is of the opinion that these rules should be adopted over the objection of JCAR. If a party believes, based on its experience, that the maintenance of logs imposes an undue burden, the Commission will entertain a petition for rulemaking.

DEPARTMENT OF TRANSPORTATION

NOTICE OF REFUSAL TO MODIFY OR WITHDRAW
RULES TO MEET THE OBJECTION OF THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES

1) Heading of the Part: Contract Procurement

2) Code Citation: 44 Ill. Adm. Code 660

3) Section Numbers: Action:
660.100(c)(5) Refusal

4) Date Notice of Proposed Rules Published in Register: June 5, 1998, 22 Ill. Reg. 9470

5) Date JCAR Statement of Objection Published in the Register: November 6, 1998, 22 Ill. Reg. 19667

6) Summary of Action Taken by the Agency:

Objection

The Joint Committee has objected to 44 Ill. Adm. Code 660.100(c)(5) of the Department's rulemaking "because the rulemaking is not in compliance with distinct statutory requirements for the publication of change orders."

Agency Response to Specific Joint Committee Objection:

Section 660.100(c)(5) provides that construction contract change orders in excess of $30,000 will be published in the *Transportation Bulletin*. The $30,000 figure corresponds to the construction small purchase threshold set in Section 20-20 of the Illinois Procurement Code (the Code). The objection is premised on an interpretation that the Code, at Sections 15-25(a) and (b), compels the publication of all change orders and all contracts, regardless of amount. While the Department concedes that the basis for the Objection has some support in the statutory language, the Department believes that a different reading of the Code more accurately comports with the statutory language and the underlying legislative intent. Based on this reading, the Department is not able to modify or withdraw the proposed rule. The Department is committed, however, to working with the sponsors of the original legislation and with other General Assembly members to clarify the language and make it clear that the publication requirements apply only to contracts exceeding the small purchase thresholds.

This matter is one of interpretation of the words in the relevant Code sections. The fundamental rule in the construction of statutes is to construe the enactment in such a way as to achieve the intention of the General Assembly as expressed in the statute. *City of Springfield v. Board of Election Commissioners of the City of Springfield*, 105 Ill.2nd 336 (1985). The primary way to discern the intention of the General

DEPARTMENT OF TRANSPORTATION

NOTICE OF REFUSAL TO MODIFY OR WITHDRAW
RULES TO MEET THE OBJECTION OF THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES

Assembly is to look to the meaning of the words used in the statute, and if those words are uncertain or ambiguous, to the nature and subject of the legislation. *Carrigan v. Illinois Liquor Control Commission*, 19 Ill.2nd 230 (1960). If the legislative purpose is expressed effectively, it will be given effect even though technical errors in drafting have caused confusion. *Kostelnak v. Retirement Bd. of Policemen's Annuity and Ben. Fund of the City of Chicago*, 84 Ill. App.3rd 616 (1980). Generally, in construing a statute to ascertain the intention of the General Assembly, the statute must be read as a whole, and the legislative intent ascertained from the whole rather than from one part. *Borg v. Village of Schiller Park Police Pension Bd*, 99 Ill. 2nd 376 (1982).

The Department believes that the Committee's interpretation does not give effect to the intention of the General Assembly reflected in the statutory language used in Sections 15-25(a) and (b) of the Code. In addition, the objection does not give effect to the balance of the Code and the legislative scheme found therein.

The Code sections relied upon in support of the Objection are found in Article 15 of the Code. That Article provides a general, overall view of the bulletin process and the general contents thereof. Section 15-25(a) provides:

(a) Invitations for bids. Notice of each and every contract that is offered, including renegotiated contracts and change orders, shall be published in the Bulletin. The applicable chief procurement officer may provide by rule an organized format for the publication of this information, but in any case it must include at least the date first offered, the date submission of offers is due, the location that offers are to be submitted to, the purchasing State agency, the responsible State purchasing officer, a brief purchase description, the method of source selection, and information of how to obtain a comprehensive purchase description and any disclosure and contract forms. (emphasis added).

Section 15-25(b) provides:

(b) Contracts let or awarded. Notice of each and every contract that is let or awarded, including renegotiated contracts and change orders, shall be published in the next available subsequent Bulletin, and the applicable chief procurement officer may provide by rule an organized format for the publication of this information, but in any case it must include at least all of the information specified in subsection (a) as well as the name of the successful responsible bidder or offeror, the contract price, the number of unsuccessful responsive bidders, and any other disclosure specified in any section of this

DEPARTMENT OF TRANSPORTATION

NOTICE OF REFUSAL TO MODIFY OR WITHDRAW
RULES TO MEET THE OBJECTION OF THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES

Code. (emphasis added).

When read in their entirety, these two general subsections relate to only the required notifications to be included in the bulletin of contracts procured by means of a competitive selection process. The meaning of what competitive selection process is covered is not defined in Article 15 and must be found elsewhere in the Code. Small purchases are not subject to any of the competitive processes. The emphasized words in the two subsections reinforce this conclusion and illustrate why the Department believes that its interpretation is the better interpretation.

1. Subsection (a) only applies to require notice of contracts that are "offered." The word "offered" has two distinct meanings when used in this subsection, and they are meanings which comport with the plain meaning of the word in each context. Each usage clearly relates to a competitive procurement process. In the first sentence of the subsection, the word is used to mean the "offered" contract by the State as an "Invitation for Bids." In the second sentence of the subsection, the word is used in two ways. The first is in the same context as the first sentence while the second refers to the response by a potential contractor to the invitation for bids, in other words the legal definition of an offer to make a contract. In the law of contracts, an offer is a proposal supported by adequate consideration, the full and complete acceptance of which constitutes a contract. This is manifested by the multiple use of the word in the sentence in one place by reference to the "date first offered," and subsequently to the date and location the "offers" are due. The important point is that each of these contextual uses unmistakably applies to a competitive bid or competitive procurement process. That is the reason why the notice must also include the "method of source selection." Purchases under the small purchase limits do not require competitive bid procedures. The objection would apply this subsection to noncompetitive procurements provided for elsewhere in the Code. Such an application is not supported by the words used.

2. Subsection (b) only applies to require notice of contracts that are "let or awarded." The phrase "let or awarded" has a clear meaning when used in this subsection and it is a meaning that comports with the commonly understood meaning of the words used in the phrase. In the context of competitive bidding procedures, the letting out or award of a contract means the assignment or granting of the contract to the low bidder at the conclusion of a competitive selection process. This conclusion is supported by the balance of the subsection which deals with the contents of any notice. Those contents include all of the "offer" information set forth in subsection (a) in addition to the name of the successful bidder and

DEPARTMENT OF TRANSPORTATION

NOTICE OF REFUSAL TO MODIFY OR WITHDRAW
RULES TO MEET THE OBJECTION OF THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES

the number of unsuccessful responsive bidders. These requirements unmistakably apply to competitive bid procedures. Purchases under the small purchase limits do not require competitive bid procedures. The objection would apply this subsection to noncompetitive procurements provided for elsewhere in the Code.

3. As alluded to above, it is only in Article 20 of the Code that one finds greater understanding of the competitive methods of selection that are affected by Sections 15-25(a) and (b). Section 15-25 must be read in conjunction with the sections governing the methods of source selection found in Article 20. All of the sections in Article 20 which provide for a method of source selection all provide for the subject of public notice. See Section 20-10, Competitive sealed bidding; Section 20-15, Competitive sealed proposals; Section 20-30, Emergency purchases; Section 20-25, Sole source procurements; and Section 20-35, Competitive selection procedures. The sole exception is Section 20-20 for small purchases. The terms of Sections 15-25(a) and (b) relate to the competitive method sections of Article 20; that is, Sections 20-10, 20-15 and 20-35. The small purchase section does not provide for a competitive method of source selection.

The Department believes that when the Code is read in its entirety, the Code intends competitive selection with public notice for all contracts, and change orders by definition, over the small purchase limits, not for every contract or change order regardless of amount. For this reason, the Department believes that the rule objected to is correct and that the best course of action is to maintain the current language in the Department rules. As noted above, the Department intends to pursue statutory amendments that would clarify the language and provide that the publication requirements apply only to contracts exceeding the small purchase thresholds.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received by the Joint Committee on Administrative Rules during the period of November 2, 1998 through November 9, 1998 and have been scheduled for review by the Committee at its December 15, 1998 meeting in Chicago with one exception. The procurement rulemaking is scheduled for the November meeting in Springfield. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rule should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

Second Notice Expires	Agency and Rule	Start Of First Notice	JCAR Meeting
12/16/98	Office of the Lieutenant Governor, Supplemental Procurement Rules (44 Ill Adm Code 1600)	7/17/98 22 Ill Reg 12461	11/17/98
12/16/98	Department of Human Services, Individualized Written Rehabilitation Program (IWRP) (89 Ill Adm Code 572)	9/4/98 22 Ill Reg 15912	12/15/98
12/16/98	Department of Human Services, Assessment for Determining Eligibility and Rehabilitation Needs (89 Ill Adm Code 553)	9/4/98 22 Ill Reg 15881	12/15/98
12/19/98	Department of Central Management Services, Pay Plan (80 Ill Adm Code 310)	9/18/98 22 Ill Reg 16397	12/15/98
12/20/98	Department on Aging, Community Care Program (89 Ill Adm Code 240)	6/12/98 22 Ill Reg 9623	12/15/98
12/23/98	Department of Nuclear Safety, Accrediting Persons in the Practice of Medical Radiation Technology (32 Ill Adm Code 401)	9/18/98 22 Ill Reg 16417	12/15/98

Rules acted upon during the period from October 16 (Issue 42, 1998) through December 28, 1998 (Issue 52) are listed in the Issues Index by Title number, Part number and Issue number. For example, 50 Ill. Adm. Code 4401 published in Issue 40 will be listed as 50-4401-40. The letter "R" designates a rule that is being repealed. Inquiries about the Issues Index may be directed to the Administrative Code Division at 217-782-4414 or jnatale@cegate.sos.state.il.us (Internet address).

PROPOSED
2-1025R-42
2-1026R-42
2-1175R-42
2-1175-42
2-1176R-42
2-1176-42
2-1276R-42
4-300-42
11-100-43
23-25-46
23-145-46
23-165-45
23-260-46
23-1038-43
32-410-42
35-703-42
35-720-42
35-721-42
35-724-42
35-725-42
35-728-42
35-738-42
35-739-42
38-360-46
47-360-47
50-926-43
59-111-45
59-299-45
62-120R-42
68-1220-42
68-1250-43
68-1315-42
68-1470-43
80-1540-45
86-100-45
86-106-47
89-121-46,47
89-309-44
89-376-47
89-378-47
89-512-45
89-515-43
89-681-42
89-682-42
89-880R-45
92-386-46
92-390-46
92-391-46
92-392-46
92-393-46
92-395-46
92-396-46
92-397-46

ADOPTED
2-6000-45
17-710-45
20-720-43
23-25-46
23-56-46
23-145-46
23-260-46
23-575-46
26-216-44
35-252-43
35-276-42
35-740-45
44-650-47
44-950-47
44-980-46
50-1406-47
50-4201-42
59-50-44
62-1701-47
62-1761-47
62-1764-47
62-1773-47
62-1774-47
62-1778-47
62-1785-47
62-1800-47
62-1816-47
62-1817-47
62-1823-47
62-1825-47
62-1840-47
62-1847-47
62-1850-47
68-1245-46
68-1300-43
68-1370-46
71-100-47
77-672-42
77-750-42
77-2055-42
80-1650-42
80-2800-47
83-410-47
83-411-47
83-450-47
83-595-47
86-100-42
86-130-46
86-500-47
86-530-46
86-3000-45
89-10-46
89-20-46
89-112-46
89-113-42
89-114-46
89-117-42
89-120-46
89-121-46,47
89-140-42,46
89-146-46
89-149-46
89-153-46
89-300-42
89-304-42
89-676-45
89-716-43
89-684-42
89-686-43
89-716-42
92-440-44

EMERGENCY
59-299-45

PEREMPTORY
80-310-42,46,47
89-121-46
89-165-42

ILLINOIS REGISTER
ADMINISTRATIVE CODE ORDER FORM

PLEASE USE THIS FORM FOR ALL ORDERS OR TO NOTIFY US OF A CHANGE OF ADDRESS. ALL ORDERS MUST BE PAID IN ADVANCE BY CHECK, MONEY ORDER, VISA, MASTER CARD OR DISCOVER CARD. CHECKS AND MONEY ORDERS MUST BE PAYABLE TO THE "SECRETARY OF STATE".

MICROFICHE SETS OF THE ILLINOIS REGISTER @$200.00 PER SET.
__1977-1978__1979__1980__1981__1982__1983__1984__1985__1986
__1987__1988__1989__1990__1991__1992__1993__1994__1995__1996

CUMULATIVE INDICES TO THE ILLINOIS REGISTER @$1.00 EACH.
__1981__1982__1983__1984__1985__1986__1987__1988__1989

SECTIONS AFFECTED INDICES TO THE ILLINOIS REGISTER @$1.00 EACH.
__1984__1985__1986__1987__1988__1989

CUMULATIVE/SECTIONS AFFECTED INDICES @$5.00 EACH.
__1990__1991__1992__1993__1994__1995__1996

BACK ISSUES OF THE ILLINOIS REGISTER (CURRENT YEAR ONLY) @$10.00 EACH._____ _____ _____
(VOLUME #) (ISSUE #) (ISSUE DATE)

ANNUAL SUBSCRIPTION TO THE ILLINOIS REGISTER @$290.00 (52 ISSUES)
____NEW ___RENEWAL

ANNUAL SUBSCRIPTION TO THE ILLINOIS ADMINISTRATIVE CODE ON CD-ROM; COMPLETELY UPDATED EDITION PUBLISHED QUARTERLY @$290.00 FOR 4 QUARTERLY EDITIONS

TOTAL AMOUNT OF ORDER: $_____
__CHECK __VISA __MC __DISCOVER CARD#:_____

EXPIRATION DATE:_____ SIGNATURE:_____
(IF CHANGE OF ADDRESS, PLEASE LIST BOTH THE OLD AND NEW ADDRESS:

_____
(NAME, PLEASE TYPE OR PRINT)

_____
(ADDRESS)

_____
(CITY, STATE, ZIP CODE AND TELEPHONE #)

MAIL TO: **OR FAX: (217) 854-0308**

GEORGE H. RYAN
SECRETARY OF STATE
INDEX DEPARTMENT
111 E. MONROE
SPRINGFIELD, IL 62756